

## FREEDOM COURT REPORTING

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 KAREN LURIE,</p> <p>6 Plaintiff,</p> <p>7 versus 1:06-CV-0034MEF</p> <p>8 GLOBE LIFE AND ACCIDENT</p> <p>9 INSURANCE COMPANY, et al.,</p> <p>10 Defendants.</p> <p>11</p> <p>12</p> <p>13 *****</p> <p>14</p> <p>15 DEPOSITION OF JOHN H. ALLEN,</p> <p>16 taken pursuant to stipulation and agreement</p> <p>17 before Jackie Parham, Certified Shorthand</p> <p>18 Reporter and Commissioner for the State of</p> <p>19 Alabama at Large, in the law offices of</p> <p>20 Beasley, Allen, Crow, Methvin, Portis &amp; Miles,</p> <p>21 272 Commerce Street, Montgomery, Alabama, on</p> <p>22 Thursday, the 7th day of December, 2006,</p> <p>23 commencing at approximately 9:30 a.m.</p>	<p>1 STIPULATION</p> <p>2 It is hereby stipulated and agreed by</p> <p>3 and between counsel representing the parties</p> <p>4 that the deposition of</p> <p>5 JOHN H. ALLEN</p> <p>6 may be taken before Jackie Parham, Certified</p> <p>7 Shorthand Reporter and Commissioner for the</p> <p>8 State of Alabama at Large, without the</p> <p>9 formality of a commission, and all formality</p> <p>10 with respect to other procedural requirements</p> <p>11 is waived; that objections to questions, other</p> <p>12 than objections as to the form of the question,</p> <p>13 need not be made at this time, but may be</p> <p>14 reserved for a ruling at such time as the said</p> <p>15 deposition may be offered in evidence or used</p> <p>16 for any other purpose, by either party, as</p> <p>17 provided for by the Federal Rules of Civil</p> <p>18 Procedure.</p> <p>19 It is further stipulated and agreed by</p> <p>20 and between the parties hereto and the witness</p> <p>21 that the signature of the witness to this</p> <p>22 deposition is hereby not waived.</p> <p>23</p>
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<p>1 APPEARANCES</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE PLAINTIFF:</p> <p>4 CHRISTOPHER E. SANSPREE, ESQUIRE</p> <p>5 Beasley, Allen, Crow, Methvin,</p> <p>6 Portis &amp; Miles</p> <p>7 272 Commerce Street</p> <p>8 Montgomery, Alabama 36104</p> <p>9</p> <p>10</p> <p>11 APPEARING ON BEHALF OF THE DEFENDANTS:</p> <p>12 PHILIP H. BUTLER, ESQUIRE</p> <p>13 Bradley, Arant, Rose &amp; White</p> <p>14 401 Adams Avenue</p> <p>15 Suite 780</p> <p>16 Montgomery, Alabama 36104</p> <p>17</p> <p>18</p> <p>19 *****</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>1 INDEX OF EXHIBITS</p> <p>2</p> <p>3 DX-1 (Allen depo in Moorer case) ..... 13</p> <p>4 DX-1A (Page 158 of Allen depo in ..... 13</p> <p>5 Moorer case)</p> <p>6 DX-2 (CV) ..... 16</p> <p>7 DX-3 (John Allen depo in ..... 23</p> <p>8 Provident case)</p> <p>9 DX-3A (Pages 33 - 36 of John ..... 23</p> <p>10 Allen depo in Provident</p> <p>11 case)</p> <p>12 DX-4 (John Allen depo in American ... 32</p> <p>13 Fidelity case)</p> <p>14 DX-4A (Page 19 of John Allen depo ... 32</p> <p>15 in Am. Fidelity case)</p> <p>16 DX-1B (Page 25 of John Allen depo ... 36</p> <p>17 in Moorer case)</p> <p>18 DX-5 (John Allen depo in American ... 55</p> <p>19 Pioneer case)</p> <p>20 DX-5A (Page 16 of depo of John ..... 55</p> <p>21 Allen in Am. Pioneer case)</p> <p>22 DX-6 (Cover of book entitled ..... 68</p> <p>23 Liability Claim Practices)</p>

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 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-3

EXHIBIT

B

tabbles

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<p style="text-align: right;">Page 5</p> <p>1 DX-6A (Chapter 4 of Liability ..... 68  2 Claim Practices' book)  3 DX-7 (List of cases) ..... 69  4 DX-8 (Report from Mr. Allen) ..... 82  5 DX-9 (Current depo list) ..... 82  6 DX-10 (Final Notice of premium ..... 88  7 due)  8 DX-11 (Premiums and Reinstatement ... 95  9 document)  10 DX-12 (Notebook) ..... 153  11  12 *****  13 INDEX OF EXAMINATION  14 MR. BUTLER ..... 6  15 MR. SANSPREE ..... 148  16 MR. BUTLER ..... 151  17  18  19  20  21  22  23</p>	<p style="text-align: right;">Page 7</p> <p>1 you in your business, or do you work by  2 yourself, or what?  3 A. Work by myself. Yes.  4 Q. Okay. Are you married?  5 A. Divorced.  6 Q. Okay. And please give me the names and  7 ages and where your children live, if you  8 have children.  9 A. Yeah. I've got four of them. Got a son,  10 John Clifford. He lives here in  11 Montgomery. He's thirty-three. Then I've  12 got a daughter, Natalie, who lives --  13 Q. Let me interrupt you just a moment because  14 that'll save us some time, unbelievably.  15 A. All right.  16 Q. Your son, John, where does he work?  17 A. He works at Jackson Hospital.  18 Q. What's he do there?  19 A. He's an anesthetist.  20 Q. Got 'ya. All right. I interrupted. Go  21 ahead.  22 A. Okay. Then I've got a daughter, Natalie.  23 I think she's approximately twenty-five.</p>
<p style="text-align: right;">Page 6</p> <p>1 JOHN H. ALLEN,  2 The witness, after having first been  3 duly sworn to speak the truth, the whole truth,  4 and nothing but the truth, testified as follows:  5 EXAMINATION  6 BY MR. BUTLER:  7 Q. Mr. Allen, would you please state your  8 full name, your residence address, and  9 your business address?  10 A. John H. Allen, 5721 Fifth Court South,  11 Birmingham, Alabama. Business address is  12 the same.  13 Q. So your office is out of your home?  14 A. Correct.  15 Q. All right. And what is your Social  16 Security number, please, sir?  17 A. 423-64-9141.  18 Q. And your date of birth?  19 A. 3/27/49.  20 Q. All right. What do you call your  21 business?  22 A. John H. Allen Consulting.  23 Q. Okay. Is there anybody associated with</p>	<p style="text-align: right;">Page 8</p> <p>1 Supposed to know these things, but close.  2 And she's a flight attendant out in Denver  3 with Sky West. And then I've got a  4 daughter, Rachel, who's about  5 twenty-three, twenty-four, and she's in  6 Washington, D.C. She's working with a  7 real estate firm up there. And then I've  8 got a seventeen-year-old, Austin, who is a  9 student in Birmingham.  10 Q. Okay. Is that all your children?  11 A. Yeah.  12 Q. Do you have a son named Grant?  13 A. Grant. That was -- That was through  14 another woman back -- back in the -- I  15 guess he's about fourteen, fifteen years  16 old, something like that, maybe a little  17 older.  18 Q. So when you told me you had four children,  19 you really have five children?  20 A. Yeah. Right.  21 Q. Okay. Have you ever been arrested for a  22 criminal offense, other than a normal  23 traffic offense?</p>

2 (Pages 5 to 8)

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<p>1 A. Yes.</p> <p>2 Q. What's that?</p> <p>3 A. 1978 for misdemeanor possession of</p> <p>4 marijuana, and 2003 for a DUI.</p> <p>5 Q. Is that all?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. You've given a number of</p> <p>8 depositions in your career, haven't you,</p> <p>9 sir?</p> <p>10 A. Yes.</p> <p>11 Q. And you realize that your testimony is</p> <p>12 under oath in those depositions as well as</p> <p>13 this one here today?</p> <p>14 A. Right.</p> <p>15 Q. Okay. In 1978, were you convicted of that</p> <p>16 offense?</p> <p>17 A. I pled guilty to misdemeanor possession.</p> <p>18 Q. Of marijuana?</p> <p>19 A. Right.</p> <p>20 Q. Okay. And is that when you were married</p> <p>21 and had children?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. It wasn't when you were a college</p>	<p>1 the drug offense in Chilton County?</p> <p>2 A. That was concerning a minuscule amount of</p> <p>3 cocaine and a small amount of marijuana.</p> <p>4 Q. And were you also charged with possession</p> <p>5 of drug paraphernalia?</p> <p>6 A. Yeah.</p> <p>7 Q. And those were dismissed?</p> <p>8 A. Yes.</p> <p>9 Q. What was the disposition of the DUI?</p> <p>10 A. Paid a fine and went to the driving school</p> <p>11 thing.</p> <p>12 Q. Okay. Were you placed on probation?</p> <p>13 A. No, sir.</p> <p>14 Q. Who was your attorney in that action?</p> <p>15 A. Tommy --</p> <p>16 Q. Kirk?</p> <p>17 A. Kirk. Yeah.</p> <p>18 Q. When was it disposed of?</p> <p>19 A. 2000 -- Let's see. -- I can't remember</p> <p>20 whether it was 2005 or 2006.</p> <p>21 Q. Okay.</p> <p>22 A. May have been 2006.</p> <p>23 Q. Was this in front of Judge Fuller in</p>
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<p>1 student or anything?</p> <p>2 A. No.</p> <p>3 Q. Okay. And then you had a DUI in 2003; is</p> <p>4 that right?</p> <p>5 A. Right.</p> <p>6 Q. And that's the only thing you've been</p> <p>7 arrested for?</p> <p>8 A. Yes.</p> <p>9 Q. Isn't it a fact that you were arrested for</p> <p>10 and pled guilty to a felony drug offense</p> <p>11 in 2004?</p> <p>12 A. No.</p> <p>13 Q. In Clanton?</p> <p>14 A. No. I only pled guilty to a DUI.</p> <p>15 Q. Oh, is that right?</p> <p>16 A. Yeah. The rest was dismissed.</p> <p>17 Q. The drug conviction was dismissed?</p> <p>18 A. There wasn't any conviction.</p> <p>19 Q. I mean, the drug charge was dismissed?</p> <p>20 A. The allegations were dismissed. Yes.</p> <p>21 Q. You were arrested for that, weren't you?</p> <p>22 A. Yes.</p> <p>23 Q. What were you accused of with regard to</p>	<p>1 Chilton County?</p> <p>2 A. I believe that's correct.</p> <p>3 Q. With regard to the misdemeanor possession</p> <p>4 of marijuana in 1978, was that in</p> <p>5 Tuscaloosa County?</p> <p>6 A. Correct.</p> <p>7 Q. Have you ever lied under oath about that</p> <p>8 arrest?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. In depositions in civil cases?</p> <p>11 A. One deposition.</p> <p>12 Q. Okay. Was that in the Moorer versus</p> <p>13 Republic American Deposition?</p> <p>14 A. I don't recall which one that was in.</p> <p>15 Q. Was Dee Miles, one of the lawyers in this</p> <p>16 firm at Beasley, Allen, the lawyer when</p> <p>17 you did that?</p> <p>18 A. I don't know.</p> <p>19 Q. Let me see if I can refresh your</p> <p>20 recollection. I've got a copy. And what</p> <p>21 I'm going to ask the court reporter to do</p> <p>22 is just copy the first page of it so that</p> <p>23 we'll have the style, and then I have a</p>

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<p>1 travel transcript, and just copy the page</p> <p>2 that's involved. If you want the rest of</p> <p>3 it, you're certainly welcome to it.</p> <p>4 MR. SANSPREE: I might have the</p> <p>5 whole thing. I don't have a</p> <p>6 copy.</p> <p>7 MR. BUTLER: I'll be glad to</p> <p>8 furnish it to you. But do</p> <p>9 you think we ought to</p> <p>10 clutter the Record by having</p> <p>11 the whole thing or --</p> <p>12 MR. SANSPREE: If it's easier</p> <p>13 just to mark it as an</p> <p>14 exhibit, she can just copy</p> <p>15 it. However you want to do</p> <p>16 it, Phil.</p> <p>17 (Defendant's Exhibit 1 marked</p> <p>18 for purposes of identification)</p> <p>19 (Defendant's Exhibit 1-A marked</p> <p>20 for purposes of identification)</p> <p>21 Q. Let me show you a copy, which is a</p> <p>22 condensed version or a travel transcript,</p> <p>23 of the deposition of Joseph Moorer versus</p>	<p>1 you given in your career, Mr. Allen?</p> <p>2 A. Fifty-eight.</p> <p>3 Q. Fifty-eight?</p> <p>4 A. Fifty-eight or fifty-nine. Yeah.</p> <p>5 Q. To refresh your recollection, does it</p> <p>6 appear that Dee Miles of the Beasley,</p> <p>7 Allen firm was counsel for the plaintiff</p> <p>8 in that case of Moorer versus Republic?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Thank you.</p> <p>11 Have you ever filed any grievances</p> <p>12 with the Alabama Bar Association against</p> <p>13 lawyers who have taken your deposition in</p> <p>14 civil cases wherein you were put up as an</p> <p>15 expert witness?</p> <p>16 A. Yes.</p> <p>17 Q. Who have you filed grievances against?</p> <p>18 A. There was one Birmingham --</p> <p>19 Q. John Dodson?</p> <p>20 A. Huh?</p> <p>21 Q. John Dodson?</p> <p>22 A. Yeah. That may be him.</p> <p>23 Q. Anyone else?</p>
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<p>1 Republic American Life Insurance Company.</p> <p>2 And I have marked on page 158, I think,</p> <p>3 the page number involved.</p> <p>4 A. Yes.</p> <p>5 Q. When you answered the question there,</p> <p>6 "Have you ever been arrested," you</p> <p>7 answered "No," and that was incorrect,</p> <p>8 wasn't it?</p> <p>9 A. Correct.</p> <p>10 Q. And you knew it was incorrect when you</p> <p>11 gave that answer, didn't you?</p> <p>12 A. It was a judgment error.</p> <p>13 Q. A judgment error?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is it a judgment error, in your view, as a</p> <p>16 witness when you knowingly answer a</p> <p>17 question falsely under oath?</p> <p>18 A. I mean, it was a judgment error, and I</p> <p>19 gave the wrong answer.</p> <p>20 Q. Yes, sir. And you knew it was wrong at</p> <p>21 the time you gave it, didn't you?</p> <p>22 A. Yes.</p> <p>23 Q. Approximately how many depositions have</p>	<p>1 A. I filed a grievance on a payment of a bill</p> <p>2 with Jack Hollingsworth.</p> <p>3 Q. Okay. What was the nature of the</p> <p>4 grievance against Mr. Dodson?</p> <p>5 A. Wasn't paying the bill.</p> <p>6 Q. That was all?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What was the disposition of that?</p> <p>9 A. Paid the bill.</p> <p>10 Q. With regard to your formal education,</p> <p>11 Mr. Sanspree has been kind enough to</p> <p>12 furnish me, along with your report, of</p> <p>13 course, your curriculum vitae. As I</p> <p>14 understand your formal education -- We can</p> <p>15 just mark that as an exhibit. That will</p> <p>16 be fine. Thank you, sir.</p> <p>17 (Defendant's Exhibit 2 marked</p> <p>18 for purposes of identification)</p> <p>19 Q. Exhibit 2 is a copy of your current</p> <p>20 curriculum vitae, is it not?</p> <p>21 A. Correct.</p> <p>22 Q. Have you reviewed that to see that it is,</p> <p>23 in fact, current?</p>

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<p>1 A. Yes.</p> <p>2 <b>Q. Okay. And as I understand from your CV,</b></p> <p>3 <b>your formal education was at the</b></p> <p>4 <b>University of Alabama, Bachelor of Science</b></p> <p>5 <b>in General Business Administration; is</b></p> <p>6 <b>that correct?</b></p> <p>7 A. Yeah. Commerce and Business</p> <p>8 Administration.</p> <p>9 <b>Q. Understood. Okay.</b></p> <p>10 <b>Do you have any degrees from formal</b></p> <p>11 <b>education institutions subsequent to your</b></p> <p>12 <b>graduation from the University of Alabama</b></p> <p>13 <b>in 1971?</b></p> <p>14 A. I assume you're excluding from that, like,</p> <p>15 the Insurance Institute of America, the</p> <p>16 Associate in Claims designation? I mean,</p> <p>17 that is a formal --</p> <p>18 <b>Q. I'm going to get to that.</b></p> <p>19 A. All right. But as far as other colleges,</p> <p>20 no, I don't have any other college</p> <p>21 degrees.</p> <p>22 <b>Q. All right, sir. Go ahead and tell me</b></p> <p>23 <b>about -- I think you were telling me about</b></p>	<p>1 <b>Q. All right, sir. Let me go back to your</b></p> <p>2 <b>college course, if I may, and ask one</b></p> <p>3 <b>question. In your courses at the</b></p> <p>4 <b>University of Alabama, did you take any</b></p> <p>5 <b>courses in life insurance claims or life</b></p> <p>6 <b>insurance?</b></p> <p>7 A. No.</p> <p>8 <b>Q. Did the AIC involve life insurance claims?</b></p> <p>9 A. I don't recall all that was in the books</p> <p>10 at the time.</p> <p>11 <b>Q. Have you ever taught on the subject of</b></p> <p>12 <b>insurance at seminars or things of that</b></p> <p>13 <b>nature?</b></p> <p>14 A. I discussed -- At one of the Association</p> <p>15 of Certified Fraud Examiners, I have</p> <p>16 talked at one time about insurance and</p> <p>17 insurance claims.</p> <p>18 <b>Q. Okay. That's just one time?</b></p> <p>19 A. May have been twice.</p> <p>20 <b>Q. Okay. Has Mr. Sanspree shared the podium</b></p> <p>21 <b>with you in that seminar?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And Mr. Sanspree is the lawyer here today</b></p>
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<p>1 <b>your AIC designation.</b></p> <p>2 A. Right.</p> <p>3 <b>Q. And what is that, please, sir?</b></p> <p>4 A. That's an Associate in Claims designation</p> <p>5 that's -- You go through a series of</p> <p>6 courses. I believe there are four courses</p> <p>7 involved on multiple claims areas. You</p> <p>8 take each course individually and then you</p> <p>9 take a written exam. And upon completion</p> <p>10 of the -- I believe it's a four-course</p> <p>11 program, then you receive your Associate</p> <p>12 in Claims designation.</p> <p>13 <b>Q. All right. And did you accomplish that</b></p> <p>14 <b>while you were employed with Aetna?</b></p> <p>15 A. That's correct.</p> <p>16 <b>Q. Did that course involve basically</b></p> <p>17 <b>commercial lines, property and</b></p> <p>18 <b>casualty-type insurance?</b></p> <p>19 A. It was all different types of insurance.</p> <p>20 I don't recall the four courses as such.</p> <p>21 But it was -- I mean, you had everything</p> <p>22 from ocean marine. It was, I guess, a</p> <p>23 litany of different insurance courses.</p>	<p>1 <b>representing Ms. Lurie?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. Okay. Thank you.</b></p> <p>4 <b>Now, the Certified Fraud Examiners,</b></p> <p>5 <b>did you have to take any course or</b></p> <p>6 <b>complete any qualifications to become a</b></p> <p>7 <b>certified fraud examiner?</b></p> <p>8 A. You had to complete an application. And</p> <p>9 then based on my training, education and</p> <p>10 experience, I was grandfathered into the</p> <p>11 organization without having to take the</p> <p>12 formal test.</p> <p>13 <b>Q. Yes, sir. That is not really an insurance</b></p> <p>14 <b>organization, is it?</b></p> <p>15 A. Well, it's made up of all realms of</p> <p>16 people, from insurance to accountants.</p> <p>17 You've got FBI agents. You've got</p> <p>18 treasury agents. A lot of internal</p> <p>19 auditors. We've got several different</p> <p>20 folks that are insurance company-oriented.</p> <p>21 So it's a big cross-section of folks that</p> <p>22 are involved.</p> <p>23 <b>Q. Would you describe it as an insurance</b></p>

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<p>1 professional organization?</p> <p>2 A. I don't know whether it's totally</p> <p>3 insurance. It's fraud-oriented, which,</p> <p>4 you know, dovetails with insurance. But</p> <p>5 it's not strictly related to the insurance</p> <p>6 line.</p> <p>7 Q. I see. During the course of your work as</p> <p>8 an expert or professional witness, have</p> <p>9 you utilized documents that you've</p> <p>10 received in other cases to assist you in</p> <p>11 forming your opinions in later cases?</p> <p>12 A. Sometimes.</p> <p>13 Q. Yes, sir. In doing so, do you attempt to</p> <p>14 honor and obey court orders?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Did you use some information in a</p> <p>17 Provident case that had been ordered to be</p> <p>18 protected or privileged?</p> <p>19 A. I don't know of any.</p> <p>20 MR. BUTLER: I'm going to do this</p> <p>21 one the same way. But --</p> <p>22 MR. SANSPREE: Am I on that one?</p> <p>23 Do I have a copy of that</p>	<p>1 welcome to it. This will</p> <p>2 be, I think, Exhibit 3 and</p> <p>3 then 3-A, please, ma'am.</p> <p>4 (Defendant's Exhibit 3 and 3-A</p> <p>5 marked for purposes of</p> <p>6 identification)</p> <p>7 Q. Let me show you Defendant's Exhibit 3,</p> <p>8 please, sir, which is a case called</p> <p>9 Pebbles versus Provident Life and Accident</p> <p>10 Insurance Company. The lawyers in that,</p> <p>11 if I can find them, appear to be a</p> <p>12 Mr. Arnston, whom I don't know, a</p> <p>13 Mr. Wilson Jenkins and Mr. Keith Medley.</p> <p>14 That's marked as Defendant's Exhibit 3.</p> <p>15 And then the reference that I have is over</p> <p>16 on page -- I think I said 33 through 36.</p> <p>17 A. Okay.</p> <p>18 Q. I don't want to rush you. But you're</p> <p>19 welcome to read that first.</p> <p>20 A. Okay. This is on the Hangarter documents?</p> <p>21 Q. Yes, sir. You might want to spell that.</p> <p>22 It's a little unusual.</p> <p>23 A. Hangarter.</p>
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<p>1 one?</p> <p>2 MR. BUTLER: I don't know.</p> <p>3 MR. SANSPREE: Was I the</p> <p>4 attorney?</p> <p>5 MR. BUTLER: You were not the</p> <p>6 attorney.</p> <p>7 MR. SANSPREE: Okay.</p> <p>8 MR. BUTLER: So for my purposes,</p> <p>9 I would like to mark the</p> <p>10 first page of it, which is</p> <p>11 the cover page and some</p> <p>12 other pages. It, again, is</p> <p>13 a travel transcript. And</p> <p>14 I'm interested in -- it's</p> <p>15 all on one page, but it</p> <p>16 covers pages 33, 34, 35 and</p> <p>17 36.</p> <p>18 MR. SANSPREE: That's fine.</p> <p>19 However you want to do it,</p> <p>20 Phil. If you don't mark the</p> <p>21 whole thing, I'll just ask</p> <p>22 you later about it.</p> <p>23 MR. BUTLER: You're certainly</p>	<p>1 Q. Thank you, sir. And that was a previous</p> <p>2 Provident case, was it not?</p> <p>3 A. Yes.</p> <p>4 Q. Handled by Mr. Sanspree?</p> <p>5 MR. SANSPREE: No.</p> <p>6 A. No.</p> <p>7 Q. It wasn't?</p> <p>8 A. No.</p> <p>9 Q. Do you know whether it was handled by the</p> <p>10 Beasley firm?</p> <p>11 A. No. I think that was a California case.</p> <p>12 MR. SANSPREE: It was a San</p> <p>13 Francisco case.</p> <p>14 Q. Did Mr. Sanspree furnish those documents</p> <p>15 to you?</p> <p>16 A. Yes.</p> <p>17 Q. And did you know that they were under a</p> <p>18 Protective Order?</p> <p>19 MR. SANSPREE: They weren't,</p> <p>20 Phil. I just got them from</p> <p>21 the courthouse. I flew out</p> <p>22 there to get them.</p> <p>23 A. That's my understanding. They just came</p>

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<p>1 straight out of the courthouse.</p> <p>2 MR. SANSPREE: If they were, then</p> <p>3 the Court didn't protect</p> <p>4 them, because I just flew</p> <p>5 out there and got them.</p> <p>6 <b>Q. Well, my question is, there seems to be a</b></p> <p>7 <b>discussion on these pages that I've marked</b></p> <p>8 <b>about the documents being privileged. And</b></p> <p>9 <b>as to when they were privileged, I think</b></p> <p>10 <b>you mentioned in your deposition here on</b></p> <p>11 <b>page -- on Exhibit 3-A that they became</b></p> <p>12 <b>privileged after your report or something</b></p> <p>13 <b>of that nature.</b></p> <p>14 MR. SANSPREE: They were marked</p> <p>15 "Privileged" at the</p> <p>16 courthouse out of San</p> <p>17 Francisco. But I just flew</p> <p>18 out there and got them.</p> <p>19 Nobody tried to protect</p> <p>20 them.</p> <p>21 A. There were several things out of the</p> <p>22 Provident thing that came up about</p> <p>23 Privileged documents.</p>	<p>1 <b>your employment background. Upon</b></p> <p>2 <b>graduating from the University of Alabama,</b></p> <p>3 <b>was your first job with Alabama Power</b></p> <p>4 <b>Company?</b></p> <p>5 A. Yes. I mean, I had had other part-time</p> <p>6 jobs, but that was the first, as such,</p> <p>7 formal job.</p> <p>8 <b>Q. Full-time job?</b></p> <p>9 A. Full-time job. Yeah.</p> <p>10 <b>Q. Like most of us, you probably had</b></p> <p>11 <b>summertime jobs and things of that nature</b></p> <p>12 <b>going through school and that sort of</b></p> <p>13 <b>thing?</b></p> <p>14 A. Right.</p> <p>15 <b>Q. All right. And what was your position at</b></p> <p>16 <b>Alabama Power?</b></p> <p>17 A. Resident claim agent.</p> <p>18 <b>Q. And did that involve property claims?</b></p> <p>19 A. All kinds of claims. You had -- At that</p> <p>20 time when I started, you handled some</p> <p>21 workers' comp. You handled property. You</p> <p>22 handled automobile, electrical contracts,</p> <p>23 slip-and-fall, general liability stuff.</p>
Page 26	Page 28
<p>1 MR. SANSPREE: I remember. They</p> <p>2 marked everything</p> <p>3 "Privileged," and the Court</p> <p>4 said it was not privileged.</p> <p>5 You just can't mark a</p> <p>6 document "Privileged" and</p> <p>7 say it's privileged.</p> <p>8 A. Also, the New York thing was also marked</p> <p>9 "Privileged and Confidential" and, yet, it</p> <p>10 was later released.</p> <p>11 <b>Q. Okay. But Mr. Sanspree was not involved</b></p> <p>12 <b>in this Pebbles case, was he?</b></p> <p>13 A. No.</p> <p>14 <b>Q. Okay. But you did obtain from</b></p> <p>15 <b>Mr. Sanspree documents from other</b></p> <p>16 <b>Provident cases to assist you in your</b></p> <p>17 <b>investigation and forming opinions in the</b></p> <p>18 <b>Pebbles case; is that right?</b></p> <p>19 A. Well, I had been working on the cases. It</p> <p>20 was just coincidental that this one came</p> <p>21 along during the time that I had been</p> <p>22 working on these other cases.</p> <p>23 <b>Q. Okay. All right. If I may go a bit to</b></p>	<p>1 <b>Q. It did not involve life insurance, did it?</b></p> <p>2 A. No.</p> <p>3 <b>Q. Okay. Were you terminated from that</b></p> <p>4 <b>position?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. When?</b></p> <p>7 A. '78.</p> <p>8 <b>Q. How long did you work for Alabama Power?</b></p> <p>9 A. From '71 to '78.</p> <p>10 <b>Q. Okay. And why were you terminated?</b></p> <p>11 A. Because of the arrest.</p> <p>12 <b>Q. The marijuana?</b></p> <p>13 A. The marijuana arrest. Yes, sir.</p> <p>14 <b>Q. And you pled guilty to that, did you not?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Have you ever lied under oath in a</b></p> <p>17 <b>deposition in a civil case, such as this</b></p> <p>18 <b>one, about the reason you left Alabama</b></p> <p>19 <b>Power?</b></p> <p>20 A. No, sir.</p> <p>21 <b>Q. Okay.</b></p> <p>22 A. I mean, the other case there, where I</p> <p>23 didn't acknowledge that.</p>

7 (Pages 25 to 28)

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Page 29	Page 31
<p>1 Q. Okay. Where you didn't -- I'm sorry. I 2 didn't follow you. 3 A. The first case that you talked about with 4 Mr. Miles, where I didn't acknowledge 5 being arrested. 6 Q. Oh, yes, sir. I know that. I wasn't 7 asking that same question. 8 A. Oh. 9 Q. No, sir. Have you ever lied about the 10 marijuana conviction on job applications? 11 A. Yes. 12 Q. Okay. Why did you do that? 13 A. Needed a job for my family. 14 Q. Okay. It was not that you had forgotten 15 about your marijuana conviction, was it? 16 A. Correct. 17 Q. After you were terminated from Alabama 18 Power Company, where did you then go to 19 work? 20 A. National Producers. 21 Q. And what did you do at National Producers? 22 A. Majority of the stuff was involving 23 inventory in cemeteries down in Columbus</p>	<p>1 A. Correct. 2 Q. Did not -- 3 A. And subrogation claims. 4 Q. Yeah. 5 A. Right. 6 Q. But the subrogation would, yet and still, 7 generally involve automobile accidents, 8 wouldn't it? 9 A. Correct. 10 Q. Did not involve life insurance, did it? 11 A. No. 12 Q. Were you fired from Stonewall Dixie? 13 A. Yeah. 14 Q. Have you ever lied under oath in 15 depositions in civil cases, wherein you 16 were identified as an expert witness, 17 about whether or not you were fired from 18 Stonewall Dixie? 19 A. I don't recall. 20 Q. Let's see if I can help you. Do you 21 recall giving a deposition in a case 22 called Brooks versus American Fidelity? 23 A. You know, I must have.</p>
Page 30	Page 32
<p>1 and Phenix City. Then some small amounts 2 of litigation, but not much. 3 Q. Okay. Why did you leave National 4 Producers? 5 A. It didn't look like it was going to be a 6 fruitful job. 7 Q. Did it go bankrupt? 8 A. The company did, I believe. 9 Q. Yes, sir. Where did you next become 10 employed? 11 A. Stonewall Dixie. 12 Q. Is that an insurance company? 13 A. Yes. 14 Q. Did you go immediately from National 15 Producers to Stonewall Dixie? 16 A. I'm not sure what the time lag was. It 17 wasn't real long. 18 Q. All right. At Stonewall Dixie, were you 19 involved in adjusting claims? 20 A. Yes. 21 Q. And were those primarily automobile 22 accident claims and liquor liability 23 claims?</p>	<p>1 Q. Let's do this one the same way, the next 2 number, and then that number as A on page 3 19. 4 (Defendant's Exhibit 4 and 4-A 5 marked for purposes of 6 identification) 7 Q. To refresh your recollection, I think it 8 was a case where the plaintiff's lawyer 9 was Archie Lamb. 10 A. Okay. 11 Q. Does that help you remember? 12 A. You know, I know Archie Lamb, but I 13 don't -- 14 Q. You don't remember who the defense lawyer 15 was? 16 A. No. 17 Q. That's very disappointing. Look at that. 18 A. Was it you? 19 Q. What I've done is marked the title page as 20 4, or asked the court reporter to do that, 21 and 4-A, the page in reference which I 22 think is page 19. I think you were 23 answering my questions in that deposition.</p>

8 (Pages 29 to 32)



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<p style="text-align: right;">Page 33</p> <p>1 A. Okay.</p> <p>2 Q. What was the question?</p> <p>3 A. "Why did you leave Stonewall Dixie"?</p> <p>4 Q. You didn't tell me you had been fired, did you?</p> <p>5 A. No.</p> <p>6 Q. Why not?</p> <p>7 A. Well, I indicated I was basically tired of</p> <p>8 handling those claims, and I was.</p> <p>9 Q. Yes, sir. Do you think that was a fair</p> <p>10 and complete answer?</p> <p>11 A. I think it covered what you asked. And</p> <p>12 there was a reduction in force, and that's</p> <p>13 what Jim Sullivan agreed to.</p> <p>14 Q. Yes, sir. But that agreement that you</p> <p>15 signed also referenced that it was an</p> <p>16 involuntary separation that they were</p> <p>17 firing you for, wasn't it?</p> <p>18 A. I believe so. It's been -- I don't know</p> <p>19 how long since I've seen that.</p> <p>20 Q. Right.</p> <p>21 A. But, you know, I feel like I answered the</p> <p>22 question.</p> <p>23</p>	<p style="text-align: right;">Page 35</p> <p>1 being a full response to the question?</p> <p>2 A. I feel like I answered your question at</p> <p>3 that point in time.</p> <p>4 Q. Thank you, sir.</p> <p>5 That's not the only time you lied</p> <p>6 about having been fired from Stonewall</p> <p>7 Jackson, is it?</p> <p>8 MR. SANSPREE: Object to the</p> <p>9 form.</p> <p>10 A. Dixie.</p> <p>11 Q. Stonewall Dixie Insurance Company.</p> <p>12 Have you lied in other depositions</p> <p>13 where you were put up as an expert witness</p> <p>14 as to the reasons that you left Stonewall</p> <p>15 Dixie Insurance Company?</p> <p>16 MR. SANSPREE: Object to the</p> <p>17 form.</p> <p>18 A. I don't recall all the answers.</p> <p>19 Q. Let me show you again this same</p> <p>20 deposition, Moorer versus Republic</p> <p>21 American Insurance Company, which we've</p> <p>22 already marked as Defendant's Exhibit 1.</p> <p>23 Let me ask the reporter to mark as Exhibit</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Yes, sir.</p> <p>2 A. Because it was true.</p> <p>3 Q. Right. And you think that's a complete</p> <p>4 answer to my question, "Why did you leave</p> <p>5 Stonewall Dixie"? And you said, "I</p> <p>6 basically was tired of handling automobile</p> <p>7 claims and the homeowners' claims and</p> <p>8 wanted something different. And Aetna had</p> <p>9 an opening in the commercial insurance</p> <p>10 division. So I went and applied for that</p> <p>11 and was accepted for that position." You</p> <p>12 don't think it would have been responsive</p> <p>13 to my question to let me know, as to my</p> <p>14 question "Why did you leave Stonewall</p> <p>15 Dixie," that you remember being fired by</p> <p>16 Stonewall Dixie?</p> <p>17 MR. SANSPREE: Object to the</p> <p>18 form.</p> <p>19 A. I mean, I felt like I answered the</p> <p>20 question at the time. To go back and say</p> <p>21 how I would have answered it umpteen years</p> <p>22 later, I can't.</p> <p>23 Q. You're comfortable with that answer as</p>	<p style="text-align: right;">Page 36</p> <p>1 1-B page 25.</p> <p>2 (Defendant's Exhibit 1-B marked</p> <p>3 for purposes of identification)</p> <p>4 Q. Read the bottom of 24 and page 25, which</p> <p>5 I've marked as 1-B, please, sir.</p> <p>6 A. Okay.</p> <p>7 Q. Would you agree with me that you did not</p> <p>8 give an honest answer to the question on</p> <p>9 page 25 with regard to your employment at</p> <p>10 Stonewall Dixie Insurance Company?</p> <p>11 A. I didn't recall any specific things about</p> <p>12 that.</p> <p>13 Q. Oh, you didn't?</p> <p>14 A. At the time, you know --</p> <p>15 Q. Well, let's be a little more clear about</p> <p>16 it, if I might borrow it back. I hate to</p> <p>17 go back and forth, but it's the only copy</p> <p>18 I have with me.</p> <p>19 A. All right.</p> <p>20 Q. The question was -- and I was not the</p> <p>21 defense attorney involved in that. But it</p> <p>22 starts at the bottom of page 24, and the</p> <p>23 question is, "Now, before we get to Aetna,</p>

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<p>1 was there any time at Alabama Power 2 Company when you were disciplined or 3 criticized about your job"? And your 4 answer was "No"; is that correct? 5 A. Right. 6 Q. And that's not true either, is it? 7 A. Well, it wasn't about my job. 8 Q. Oh, okay. I withdraw the question. 9 The question in this Exhibit 1-B, 10 "How about when you were at National 11 Producers"? And you said "No." And the 12 question, "And Stonewall"? "And when I 13 say "criticized," I'm talking about any 14 complaints, oral or written, any 15 reprimands, oral or written, discipline 16 for any reason." And you said, "I don't 17 recall any specific things at Stonewall 18 Dixie." 19 A. Yes. 20 Q. You don't consider having been fired from 21 Stonewall Dixie a disciplinary action? 22 A. Well, I mean, as far as the way I consider 23 that, I blew the whistle on some illegal</p>	<p>1 American? 2 A. Yes. 3 Q. Okay. And whether or not you think it was 4 appropriate or not, you do consider a 5 termination from a job a disciplinary 6 action, don't you? 7 A. I guess it can be. I mean, I considered 8 what happened was a whistle-blowing 9 retribution. So, I mean, as far as what 10 they write down, they can write anything 11 they want down to criticize you, 12 after-the-fact-type thing. But I blew the 13 whistle, and they terminated me and 14 terminated a lot of folks within the 15 claims department. 16 Q. Okay. And you don't agree with their 17 action in terminating you, do you? 18 A. Correct. 19 Q. But, nevertheless, it was disciplinary, 20 wasn't it? 21 MR. SANSPREE: Object to the 22 form. 23 A. You think whatever -- You know, that's --</p>
Page 38	Page 40
<p>1 activities that were taking place in the 2 company. And I felt like, you know, there 3 was retribution taken against me for 4 blowing the whistle. 5 Q. What did you blow the whistle on? 6 A. Folks stealing money and stealing 7 property. 8 Q. Who stole money? 9 A. Folks out of Florida. 10 Q. What are their names? 11 A. I don't recall the names. I found out in 12 the subro where checks were going out. 13 And then the president of Stonewall at the 14 time converted a vehicle to his own use 15 out of salvage. 16 Q. Who was that? 17 A. Jim Sullivan. 18 Q. Okay. Well, did you report that to the 19 stockholders? 20 A. I reported it to the Great American. 21 Q. To Great American? 22 A. Yeah. 23 Q. Was Stonewall Dixie a subsidiary of Great</p>	<p>1 You know -- 2 Q. Do you consider that it was not 3 disciplinary? 4 A. Well, "disciplinary" is more of, you know, 5 trying to change things. I mean, all I 6 did was end up getting the ax. So, you 7 know, there's a difference between 8 discipline and just having the ax fall on 9 you. 10 Q. On this same page, Exhibit 1-B, you 11 answered a moment ago that you had never 12 lied about the reason you left Alabama 13 Power Company. On this same page of the 14 exhibit, on page 20 and 21 of this same 15 deposition, you did, in fact, lie about 16 the reason why you left Alabama Power, 17 didn't you? 18 MR. SANSPREE: He's already said 19 that, though. Because 20 that's the same deposition 21 where he denied the 22 marijuana arrest. 23 MR. BUTLER: That's right. But</p>

10 (Pages 37 to 40)

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<p>1 he answered a moment ago 2 that he had never lied about 3 the reason he left Alabama 4 Power. 5 MR. SANSPREE: He tried to point 6 to that -- 7 MR. BUTLER: The Record will 8 speak for itself. 9 MR. SANSPREE: He tried to point 10 you to the deposition a 11 second ago. 12 MR. BUTLER: Could be my 13 misunderstanding, but the 14 Record will speak for 15 itself. 16 <b>Q. Look at Exhibit 1-B, and the pages that</b> 17 <b>are referenced, I think, are 20 and 21.</b> 18 A. "Why did you leave Alabama Power Company? 19 I had a better opportunity with National 20 Producers. Is that the only reason you 21 left? Yes." 22 <b>Q. And that's not the truth, is it?</b> 23 A. Correct.</p>	<p>1 <b>for the plaintiff?</b> 2 A. Yes. 3 <b>Q. Thank you.</b> 4 <b>Have you ever lied about the reason</b> 5 <b>you left Stonewall Dixie on employment</b> 6 <b>applications?</b> 7 A. That would have been related to Aetna. 8 Yeah. I had answered that question 9 before. 10 <b>Q. Well, on the Aetna application, you said</b> 11 <b>that you lied about your termination with</b> 12 <b>Alabama Power, on the Aetna application.</b> 13 <b>You also lied about the reason you left</b> 14 <b>Stonewall Dixie Insurance Company to</b> 15 <b>Aetna, didn't you?</b> 16 A. The reason I -- What I stated to Aetna was 17 my conversation with Jim Sullivan, who 18 said that he would back me on a reduction 19 in force; that that would be an 20 explanation he would give to my employer. 21 And Aetna called Sullivan, talked with 22 him, and he explained my abilities, and 23 they hired me.</p>
Page 42	Page 44
<p>1 <b>Q. And you knew it was not the truth at the</b> 2 <b>time you gave the answer?</b> 3 A. Yes. 4 <b>Q. Why did you answer knowingly something</b> 5 <b>that was untrue when you had sworn to give</b> 6 <b>testimony under oath?</b> 7 A. Again, you know, I made a judgment error 8 on not admitting my arrest or being fired. 9 <b>Q. It was just a judgment error?</b> 10 A. I consider it a judgment error. Yes, sir. 11 <b>Q. You consider giving false testimony under</b> 12 <b>oath a judgment error?</b> 13 A. I mean -- 14 <b>Q. Is that right?</b> 15 A. I'd have to think about that. I mean, I 16 made some judgment errors on the status of 17 employment. 18 <b>Q. Do you want to answer it any further, or</b> 19 <b>is that your answer?</b> 20 A. That's my answer. 21 <b>Q. Thank you.</b> 22 <b>This is the deposition where Dee</b> 23 <b>Miles with Beasley, Allen was the lawyer</b></p>	<p>1 <b>Q. So your position in not telling Aetna the</b> 2 <b>truth on your application was based upon</b> 3 <b>somebody else agreeing not to tell the</b> 4 <b>truth; is that right?</b> 5 A. It was based on an agreement I had with 6 the company on the reason that they would 7 say for my leaving. 8 <b>Q. Thank you.</b> 9 <b>When did you go to work for Aetna?</b> 10 A. July of '83. 11 <b>Q. Okay. And what type of work did you do at</b> 12 <b>Aetna, please, sir?</b> 13 A. Commercial claims. Started out in 14 commercial claims. 15 <b>Q. I think I know what you're talking about.</b> 16 <b>But so that the jury will know, what are</b> 17 <b>we talking about when we speak of</b> 18 <b>commercial claims?</b> 19 A. Commercial claims would be like businesses 20 -- mainly it would be a business 21 environment, workers' comp-type claims. 22 It would -- 23 <b>Q. Casualty claims?</b></p>

11 (Pages 41 to 44)

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<p>1 A. Casualty claims, bonds, fidelity bonds, 2 surety bonds, reclamation bonds. 3 <b>Q. Business interruption claims?</b> 4 A. Business interruption. Any type business 5 insurance. 6 <b>Q. It did not involve life insurance, did it?</b> 7 A. No. 8 <b>Q. While at Aetna, were you ever criticized</b> 9 <b>for your claims-adjusting; that Aetna felt</b> 10 <b>like it placed the company at unreasonable</b> 11 <b>and unnecessary risk?</b> 12 A. I had seen one criticism on that. I got 13 praised and got bonuses for doing good. 14 <b>Q. Yes, sir.</b> 15 A. And any criticism I had was a very small 16 percentage of the thousands of claims I 17 had. So to me that's just inherent in the 18 claims. 19 <b>Q. Because, like everyone else, claims</b> 20 <b>adjusters make errors every day, don't</b> 21 <b>they, maybe not every day?</b> 22 A. Maybe not every day. 23 <b>Q. But they make errors?</b></p>	<p>1 review the policy to determine whether 2 Alabama Power was even a named insured 3 under the policy? 4 A. We had contractual coverage. 5 <b>Q. Was Alabama Power the named insured under</b> 6 <b>the policy that you were making the offer</b> 7 <b>on?</b> 8 A. I don't recall. 9 <b>Q. Was it generally your practice to review</b> 10 <b>the policy involved in the course of your</b> 11 <b>claims investigation and adjusting?</b> 12 A. And contracts. Any contracts that would 13 have existed between the insureds and the 14 Power Company. 15 <b>Q. All right. How long did you work for</b> 16 <b>Aetna?</b> 17 A. For who? 18 <b>Q. For Aetna.</b> 19 A. Oh, okay. That was between '83 to 20 December of '92. 21 <b>Q. Okay. Why did you leave Aetna?</b> 22 A. My job was eliminated. 23 <b>Q. Okay.</b></p>
Page 46	Page 48
<p>1 A. They make errors. 2 <b>Q. And you're not exempt from that, are you?</b> 3 A. Correct. I mean, people have different 4 thoughts about the way things are going to 5 be handled. And, I mean, on one of them 6 they had, I was criticized. So they 7 didn't want me to handle the claim. And 8 what did they do? They gave me the claim 9 anyway. So -- 10 <b>Q. Okay. And do you recall an instance where</b> 11 <b>you made an in excess of a half million</b> 12 <b>dollar offer on behalf of Alabama Power</b> 13 <b>that had been sued?</b> 14 A. Oh, that -- I don't know whether it was a 15 half-million dollar offer. I think it was 16 a contractual defense that was owed to 17 Alabama Power, as a result of a cable 18 company that was attaching to a power 19 pole, that agreed to indemnify Alabama 20 Power if anything happened on their 21 property. 22 <b>Q. Yes, sir. Do you recall your error being,</b> 23 <b>in that situation, where you did not</b></p>	<p>1 A. And that's contrary to Chadwick saying I 2 was fired, which was an outright lie. 3 <b>Q. Chadwick was one of your supervisors,</b> 4 <b>wasn't he?</b> 5 A. For a short period of time. He wasn't 6 there that long. 7 <b>Q. Was he your supervisor when you left?</b> 8 A. No. No. He was an assistant manager. I 9 had a supervisor that was between him. 10 <b>Q. So, basically, he supervised your</b> 11 <b>supervisor?</b> 12 A. Yes. 13 <b>Q. Okay. Therefore, do you think he would be</b> 14 <b>in a position to know why you left Aetna?</b> 15 A. You know, he got up there and lied. So, 16 you know, I think it was, you know, 17 uncalled-for what he did. But he lied and 18 I couldn't do anything about it. 19 <b>Q. But he did testify under oath that you</b> 20 <b>were fired, didn't he?</b> 21 A. That's right. And that wasn't the case. 22 <b>Q. Okay. You say your job was eliminated?</b> 23 A. Yes.</p>

12 (Pages 45 to 48)

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- 1 Q. Okay. And where were you working for  
2 Aetna at the time?  
3 A. Birmingham.  
4 Q. There were people still in the Birmingham  
5 Aetna office when you left, weren't there?  
6 A. It had shrunk significantly.  
7 Q. Had you been demoted by Aetna before you  
8 left?  
9 A. Yes.  
10 Q. Why?  
11 A. It was on the way I was handling the  
12 claims. But they still gave me the same  
13 claims. They didn't change anything. I  
14 received the same pay. Got the same  
15 claims. Continued to handle the same  
16 stuff for the entire period I was there.  
17 Q. Have you ever testified that you were  
18 deselected for new positions from Aetna in  
19 Birmingham when you left?  
20 A. I guess I may have. I recall the word  
21 "deselected."  
22 Q. It was your word, wasn't it?  
23 A. Huh?

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- 1 Q. It was your word, wasn't it?  
2 A. I believe so.  
3 Q. Okay. Do you believe you were unjustly  
4 criticized for your claims-handling  
5 activities at Aetna?  
6 A. Yes.  
7 Q. Has your work for any of these insurance  
8 companies that you worked for ever  
9 involved the handling or adjusting of life  
10 insurance claims?  
11 A. No.  
12 Q. Okay. Have you ever worked as a life  
13 claims adjuster?  
14 A. No.  
15 Q. Have you ever been licensed as a life  
16 insurance agent?  
17 A. No.  
18 Q. And have you ever taken any life insurance  
19 courses?  
20 A. I can't remember whether AIC had some life  
21 insurance in that. They may or may not  
22 have. I don't recall.  
23 Q. When you left Aetna, you went into the

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- 1 consulting business, is that right, the  
2 same business you're in today?  
3 A. Yes.  
4 Q. And what does that business generally  
5 involve, please, sir?  
6 A. I do some investigation from time to time  
7 for -- I've done some for insurance  
8 companies, for individuals, for attorneys.  
9 Most of it involved expert witness work.  
10 But it's generally a combination of expert  
11 witness work and some investigation work.  
12 Q. All right, sir. With regard to your  
13 income, what overall -- it doesn't have to  
14 be exact. But, in general, what is your  
15 percentage of your income that comes from  
16 being a professional witness in insurance  
17 matters?  
18 A. Majority of it.  
19 Q. More than 75 percent?  
20 A. I mean, it can vary from year-to-year as  
21 far as what happens there. But probably  
22 75 percent, at least.  
23 Q. Okay. Are you a member of any expert

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- 1 witness groups or associations, such as  
2 TASA or anybody like that?  
3 A. I was at one time.  
4 Q. Now are you?  
5 A. No.  
6 Q. Do you have any type of an advertising  
7 brochure or website that you use to let  
8 people know what you're holding yourself  
9 out as an expert in?  
10 A. No.  
11 Q. Do you hold yourself out to those that  
12 might be interested in hiring you as a  
13 consultant as an expert in the field of  
14 life insurance claims?  
15 A. Yes.  
16 Q. Oh, you do?  
17 A. Yes.  
18 Q. On what basis do you contend that you are  
19 an expert in life insurance claims?  
20 A. Because the principles of investigation  
21 and coverage analysis are consistent in  
22 life insurance claims as they are other  
23 claims.

13 (Pages 49 to 52)



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<p style="text-align: right;">Page 53</p> <p>1 Q. How do you know that if you've not taken 2 any courses on life insurance claims and 3 you've not worked as a life insurance 4 claims examiner? 5 MR. SANSPREE: Object to the 6 form. 7 A. That'd be from handling various cases in 8 which you review the manuals of the 9 various companies, on those that might 10 have a manual that, you know, say what's 11 involved, and it's consistent -- I believe 12 it's just years of reviewing multiple, 13 different companies' policies and 14 procedures. And, you know, the aspects of 15 the investigation and coverage analysis 16 are all consistent with what you do on an 17 insurance claim. 18 Q. So then your expertise in life insurance 19 and life insurance claims have come from 20 your involvement as a professional witness 21 hired in connection with cases involving 22 life insurance; is that right? 23 A. Yes.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. What kind of claim was it? 2 A. That was employee theft. 3 Q. Employee theft. Okay. 4 A. Yeah. 5 Q. You are correct. I've got the wrong one 6 in my mind. 7 (Brief recess) 8 (Defendant's Exhibit 5 and 5-A 9 marked for purposes of 10 identification) 11 Q. Let me show you what's been marked as 12 Defendant's Exhibit 5, which is a case 13 called American Pioneer Life Insurance 14 Company versus Transportation Techniques, 15 Inc. and John Esposito. Do you remember 16 that case? It involved Dee Miles with the 17 Beasley, Allen firm for the plaintiff -- 18 excuse me. I think it was a dec action -- 19 for the defendant, and William Wood as the 20 plaintiff lawyer filing the dec action. 21 A. I remember the name Esposito, but I don't 22 remember much specifics about the case. 23 Q. All right. Let me ask you to look at</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. How many cases have you been 2 employed as an expert witness in life 3 insurance? 4 A. I don't know. 5 Q. You have no idea? 6 A. No. 7 Q. Can you think of more than one, not 8 counting this case? 9 A. Not counting this case? I don't recall. 10 I couldn't tell you specifically. I know 11 there have been others, but I just don't 12 recall which cases they are. 13 Q. There was one where Bill Wood at Norman, 14 Wood in Birmingham was the defense lawyer, 15 wasn't he, that again Dee Miles was the 16 plaintiff's lawyer? 17 A. I don't know what case you're talking 18 about. 19 Q. The case of Mobile Scottish Rite Bodies 20 versus New Hampshire Insurance Company. 21 A. That wasn't a life claim. 22 Q. It wasn't? 23 A. No.</p>	<p style="text-align: right;">Page 56</p> <p>1 Exhibit 5-A, which is the bottom of page 2 16 in the deposition, and read -- I've 3 taken the time to highlight the question 4 and the answer there. You can read any 5 portion of it you'd like. But that's what 6 I'm going to be asking you about. 7 A. The top of 16? 8 Q. I think it's the highlighted portion. 9 A. Okay. 10 Q. This question asks you whether you had in 11 the past ever claimed to have experience 12 in reviewing, supervising or actually 13 handling life insurance claims, didn't it? 14 A. Yes. 15 Q. And it says, "Do you ever recollect where 16 you've taken that position?" And your 17 answer was "No"; isn't that right? 18 A. That's what's down there. 19 Q. is that correct? Did you answer 20 truthfully there? 21 A. Which question are you talking about? 22 Q. Right here (indicating). 23 A. Okay. I'm sorry. I was on the wrong</p>

14 (Pages 53 to 56)

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<p style="text-align: right;">Page 57</p> <p>1 page. Okay. I mean, it was coincidental 2 on life insurance claims. I mean, that 3 would -- 4 <b>Q. Yes, sir. But this asks whether you had</b> 5 <b>in the past ever claimed to have had</b> 6 <b>experience in reviewing, supervising or</b> 7 <b>actually handling life insurance claims.</b> 8 A. Well, reviewing. You know, I mean, 9 there's a difference between being an 10 expert as a witness and a consultant, 11 where you're reviewing claims and looking 12 at stuff that may never go to a expert or 13 -- I mean, you can do work as a consultant 14 that you don't necessarily handle as an 15 expert. So there are a couple of 16 different things involved there. So you 17 can be involved with reviewing stuff and 18 still not have handled the thing on a -- 19 you know, from an insurance company 20 perspective. 21 <b>Q. I see. And I understand you're not a</b> 22 <b>lawyer, are you, sir?</b> 23 A. Correct.</p>	<p style="text-align: right;">Page 59</p> <p>1 <b>of life insurance claims-handling or an</b> 2 <b>adjuster, would you?</b> 3 A. Well, I mean, as far as a consultant, you 4 may be looking at it from the claims 5 adjuster's perspective, and giving a 6 review of claims-handling procedures as it 7 relates to a claim. Again, you're going 8 to have -- 9 <b>Q. Well, maybe I better ask it this way. And</b> 10 <b>I don't mean to cut you off. But what is</b> 11 <b>your view, as a consultant, not in the</b> 12 <b>legal --</b> 13 (Brief interruption) 14 <b>Q. Let me ask this: I need to get your</b> 15 <b>understanding what enables you to give</b> 16 <b>expert opinion testimony on a subject</b> 17 <b>matter. And let me finish my question.</b> 18 <b>It's going to be kind of a long question.</b> 19 <b>But what I'm interested in, you are here</b> 20 <b>expressing opinions in this case on life</b> 21 <b>insurance claims-handling. You've told me</b> 22 <b>that you do not have recollection of any</b> 23 <b>courses on life insurance.</b></p>
<p style="text-align: right;">Page 58</p> <p>1 <b>Q. Okay. And, so, I don't mean for this</b> 2 <b>question to be addressed to you in the</b> 3 <b>capacity of a lawyer. It's not a legal</b> 4 <b>question. Because Mr. Sansprey will</b> 5 <b>object to that, and I don't want him to</b> 6 <b>object. But, nevertheless, you told me a</b> 7 <b>moment ago that you had gained your</b> 8 <b>experience in life insurance as a</b> 9 <b>professional witness in reviewing life</b> 10 <b>insurance claims manuals, and life</b> 11 <b>insurance policies, and things of that</b> 12 <b>nature, and working on cases as a</b> 13 <b>consultant, professional witness; isn't</b> 14 <b>that right?</b> 15 A. Yeah. I mean, you would have life 16 insurance stuff that would be involved 17 with accidental deaths and stuff like 18 that. 19 <b>Q. Right.</b> 20 A. Where you would have inquiries and then 21 you'd look at, you know, potential for 22 subro or whatever involved in the thing. 23 <b>Q. But you wouldn't be acting in the capacity</b></p>	<p style="text-align: right;">Page 60</p> <p>1 A. I didn't say that. I just said I didn't 2 recall what was in the AIC courses that 3 may have related to life insurance. 4 <b>Q. Is that different from what I said?</b> 5 A. Yeah. You're saying that, you know, I 6 never looked at any stuff. 7 <b>Q. No, I didn't. I said that you don't</b> 8 <b>recall having taken any life insurance</b> 9 <b>courses. Is that wrong?</b> 10 A. Well, I wasn't ruling it out. To me, your 11 question is ruling it out. 12 MR. BUTLER: Read my question 13 back, please, ma'am. 14 (Requested portion of Record 15 read by the Reporter) 16 <b>Q. Do you have recollection of life insurance</b> 17 <b>courses?</b> 18 A. Again, I don't recall what was in the AIC 19 group of courses as to -- you know, 20 because that falls under personal 21 insurance, which you can have a lot of 22 things under personal insurance. So -- 23 <b>Q. Yes, sir. But, I mean, we may be</b></p>

15 (Pages 57 to 60)

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<p>1 quibbling with words here and 2 understanding of words. But let me be 3 sure that I've got your testimony correct. 4 Do you recall having taken any life 5 insurance courses? 6 A. Again, specifically on life alone -- 7 Q. I didn't say life alone. 8 A. Again, I don't recall what's in the four 9 different courses, as to whether some of 10 the personal insurance is covered on life. 11 Q. Okay. 12 A. So -- 13 Q. All right. All right. And I think you 14 told me that you gained your knowledge and 15 experience on life insurance claims from 16 your work as a professional witness hired 17 to consult on life insurance cases; isn't 18 that correct? 19 A. Yes. To me it's training, education, job 20 experience, job knowledge, and having been 21 through multiple companies and their 22 procedures manuals, for those companies 23 that have procedures manuals.</p>	<p>1 manuals and procedures, for which Globe 2 says they have no manuals and procedures 3 or guidelines to go by. So I'm used to 4 reviewing industry standards and reviewing 5 the standards of the various companies. 6 But in this case they say they don't have 7 any. So, you know, for me, I think I'm 8 more qualified on handling claims relative 9 to this. I mean, even 10 Ms. What's-her-name, she states she didn't 11 even know what a reservation of rights was 12 -- Ms. Whitaker said she didn't know what 13 a reservation of rights was after thirty 14 years of being in insurance. 15 Q. Right. 16 A. So it's those type things. You know, it's 17 one-on-one. "I don't know anything about 18 reservation of rights. And we don't have 19 any claims or procedures manual, and 20 everything is one-on-one training." So 21 that to me -- I've had a lot more training 22 and experience than these folks who go 23 around operating without manuals or</p>
Page 62	Page 64
<p>1 Q. Yes, sir. 2 A. And the difference in this case is -- 3 Q. I didn't ask you that. 4 A. Well -- 5 Q. I will, though. 6 A. I mean, but -- I mean, the fact of the 7 matter is, the way it's going, the folks 8 testify that they have no training 9 manuals. So, I mean, I've had the benefit 10 of reviewing multiple companies' manuals 11 and procedures, for which this company 12 says they don't have any manuals or 13 procedures, and it's one-on-one training 14 and word-of-mouth. 15 Q. Yes, sir. 16 A. Now, that to me -- I've had much more 17 experience than any of these folks have, 18 because all of theirs is word-of-mouth 19 without any procedures. 20 Q. In life insurance claims you've had much 21 more experience? 22 A. Well, as far as going through and 23 understanding industry standards and</p>	<p>1 procedures. 2 Q. Yes, sir. You would agree with me that 3 different kinds of insurance, be it life 4 insurance versus property and casualty, 5 for example, would have different 6 procedures and different terminology that 7 would apply to them, wouldn't you? 8 A. Some would be consistent. Some might be a 9 little different. 10 Q. Tell me, please, sir, how the terminology 11 of reservation of rights could possibly 12 apply in a life insurance claim. 13 A. Because of having a coverage situation. 14 And it's my experience that whenever 15 you've got a coverage dispute, you should 16 notify the insured of the coverage 17 dispute. And I know a lot of companies 18 take the position, "Well, you don't have 19 to do that." But when you've got a 20 coverage issue, it's been my thing that 21 you advise the insured and let them know. 22 Q. What is your understanding of the term in 23 the insurance industry, in general, of the</p>

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<p>1 term "reservation of rights"?</p> <p>2 A. That's advising the insured of a coverage</p> <p>3 situation for which there is a issue as to</p> <p>4 whether or not it's coverage. You define</p> <p>5 what's in the policy. You define what's</p> <p>6 in the -- or what the situation is. And</p> <p>7 that there is a question between the</p> <p>8 policy coverages and the situation of the</p> <p>9 individual filing the claim.</p> <p>10 Q. Do you know of any place in the insurance</p> <p>11 industry where the term "reservation of</p> <p>12 rights" is used, except in the liability</p> <p>13 insurance context, where a liability</p> <p>14 insurance carrier is proceeding to defend</p> <p>15 its insured in a liability claim, but</p> <p>16 reserving its rights and defenses to</p> <p>17 challenge coverage in indemnity?</p> <p>18 A. I mean, usually it bonds to me; any time</p> <p>19 you had a question of coverage, you advise</p> <p>20 the insured and you reserve your rights.</p> <p>21 Q. Okay. So we've said liability insurance</p> <p>22 carriers for casualty claims and for</p> <p>23 bonds. Can you tell me anywhere in the</p>	<p>1 but it's not liability coverage per se.</p> <p>2 But, I mean, there is a liability for the</p> <p>3 coverage that you've written.</p> <p>4 Q. You're saying that life insurance</p> <p>5 coverage --</p> <p>6 A. No.</p> <p>7 Q. -- is the same as liability coverage?</p> <p>8 A. No, I'm not.</p> <p>9 MR. SANSPREE: Object to the</p> <p>10 form.</p> <p>11 Q. Thank you.</p> <p>12 MR. BUTLER: Please, ma'am, mark</p> <p>13 this as our next exhibit,</p> <p>14 and specifically the page</p> <p>15 number that the witness has</p> <p>16 referred us to, being --</p> <p>17 THE WITNESS: Basically it's that</p> <p>18 chapter.</p> <p>19 Q. The whole chapter, Chapter 4?</p> <p>20 A. Yeah. I'll say Chapter 4.</p> <p>21 MR. BUTLER: -- Chapter 4 of this</p> <p>22 book. And I would ask the</p> <p>23 court reporter to mark this</p>
Page 66	Page 68
<p>1 insurance industry than it's used other</p> <p>2 than that?</p> <p>3 MR. SANSPREE: Object to the</p> <p>4 form.</p> <p>5 A. In the liability claims practices, which</p> <p>6 is broad-based, and this is a</p> <p>7 authoritative insurance document -- or</p> <p>8 treatise, and it references the use of the</p> <p>9 reservation of rights where you've got</p> <p>10 questions of coverage. So --</p> <p>11 Q. And it talks about liability coverage?</p> <p>12 A. It's speaking -- Basically, it's speaking</p> <p>13 generic. Whenever you've got -- I mean,</p> <p>14 it is the liability claims. It doesn't</p> <p>15 say --</p> <p>16 Q. That's the entire title of this whole</p> <p>17 treatise is "Liability Insurance Claim</p> <p>18 Practice" -- or "Liability Claim</p> <p>19 Practices"?</p> <p>20 A. Right.</p> <p>21 Q. We're not dealing here with liability</p> <p>22 coverage, are we?</p> <p>23 A. Well, it's a form of liability coverage,</p>	<p>1 and --</p> <p>2 THE WITNESS: We need to make a</p> <p>3 copy of that.</p> <p>4 MR. BUTLER: -- to mark this as</p> <p>5 our next numbered exhibit,</p> <p>6 Chapter 4, that is the</p> <p>7 chapter the witness relies</p> <p>8 on for his testimony, and</p> <p>9 then return it to</p> <p>10 Mr. Sanspree so that</p> <p>11 Mr. Allen will have it back.</p> <p>12 THE WITNESS: I just don't want</p> <p>13 to put a sticker on there</p> <p>14 because it'll tear the cover</p> <p>15 up.</p> <p>16 (Off-the-Record discussion)</p> <p>17 MR. BUTLER: Put a note on there</p> <p>18 for our exhibit number for</p> <p>19 the cover and first -- the</p> <p>20 Roman numeral pages to</p> <p>21 describe the edition, and</p> <p>22 then Chapter 4, please,</p> <p>23 ma'am.</p>

17 (Pages 65 to 68)

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<p>1 (Defendant's Exhibit 6 and 6-A 2 marked for purposes of 3 identification) 4 <b>Q. You told me that your experience with 5 regard to life insurance claims was 6 limited to your investigation as a 7 professional witness of civil cases in 8 which you've been hired.</b> 9 A. And a consultant. 10 <b>Q. And a consultant in those cases, right?</b> 11 A. Yes, sir. 12 <b>Q. All right. This particular case, American 13 Pioneer Life versus Transportation 14 Techniques, did involve life insurance, 15 didn't it?</b> 16 A. I don't recall it specifically involving 17 life. 18 <b>Q. Well, you identified it as -- Just a 19 moment.</b> 20 (Defendant's Exhibit 7 marked 21 for purposes of identification) 22 <b>Q. Let me show you Exhibit 7. That comes 23 from your own documents, doesn't it?</b></p>	<p>1 in? 2 A. I don't recall. I didn't -- 3 <b>Q. Are there any?</b> 4 A. I don't recall. You know, I don't keep 5 track of stuff like that. 6 <b>Q. Well, you keep a list of them, don't you?</b> 7 A. I've got a list, but that doesn't 8 necessarily mean what type it is. 9 <b>Q. Well, look at whatever you need to know. 10 If that's the basis of your expertise, I 11 need to know what other life insurance 12 benefit cases that you have been involved 13 in.</b> 14 A. I don't recall. 15 <b>Q. You can't tell me any?</b> 16 A. Well, I don't recall. 17 <b>Q. Okay.</b> 18 A. I just don't recall all of them. 19 <b>Q. Can you tell me there have been more than 20 this one marked Defendant's Exhibit 5?</b> 21 A. As a consultant or as an expert? 22 <b>Q. Either.</b> 23 A. I know I've had numerous ones, but I just</p>
Page 70	Page 72
<p>1 A. Yes. 2 <b>Q. And there you describe that case as a life 3 insurance benefits case, don't you?</b> 4 A. Oh, okay. You're talking about -- I've 5 just got number 8 as "Denial of Life 6 Insurance Benefits." I didn't have the 7 name. 8 <b>Q. You didn't have the name of the case, but 9 you've got the names of the lawyers, don't 10 you?</b> 11 A. Yes. 12 <b>Q. And they're Dee Miles and Bill Wood, 13 aren't they?</b> 14 A. Yes. 15 <b>Q. And certainly there were questions in that 16 deposition that you've seen about life 17 insurance, weren't there?</b> 18 A. Yes. 19 <b>Q. Does that refresh your recollection that 20 this was a life insurance benefits case?</b> 21 A. Yes, sir. 22 <b>Q. What others have you served as a 23 professional expert or consultant witness</b></p>	<p>1 don't recall the names. 2 <b>Q. Can you tell me anything about them, who 3 the lawyers were, what court they were in 4 or anything?</b> 5 A. No, sir. 6 <b>Q. Okay. You have expressed opinions about 7 industry standards in this case with 8 regard to life insurance claims-handling, 9 have you not?</b> 10 A. Yes. 11 <b>Q. Okay. Where do you get your knowledge of 12 industry standards with regard to 13 adjusting and handling life insurance 14 claims, except for serving as a consultant 15 or an expert witness in other civil cases?</b> 16 A. And reviewing treatises and claims manuals 17 and procedures manuals. 18 <b>Q. What treatises have you reviewed?</b> 19 A. That's one that I had had and read from a 20 long time ago that has stuff on life. 21 <b>Q. Okay. Can you, to save us time so that I 22 won't have to read this treatise, can you 23 narrow it any for me by telling me which</b></p>

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<p>1 section or chapter or page that you would</p> <p>2 rely upon for the subject of knowledge of</p> <p>3 industry standards in handling of life</p> <p>4 insurance claims?</p> <p>5 A. That would be under Chapter 10.</p> <p>6 Q. Okay.</p> <p>7 A. Looks like page 235 to 265.</p> <p>8 Q. Might I borrow it a moment? Show me,</p> <p>9 Mr. Allen, where in Chapter 10 of this</p> <p>10 book, "Personal Insurance" by J. J.</p> <p>11 Lonnie, George Raider, Donald Oakes, 1st</p> <p>12 Edition, 1987, show me in Chapter 10, that</p> <p>13 you've identified, what portion of that</p> <p>14 chapter you rely upon with regard to your</p> <p>15 opinions in this case, with regard to</p> <p>16 claims-handling procedures for life</p> <p>17 insurance claims.</p> <p>18 A. I don't think this discusses</p> <p>19 claims-handling procedures.</p> <p>20 Q. Doesn't discuss it at all, does it?</p> <p>21 A. Correct. And that's what I was telling</p> <p>22 you, that the liability claims practices</p> <p>23 of the claims-adjusting procedures have</p>	<p>1 dealing with life insurance claims?</p> <p>2 A. No, sir.</p> <p>3 Q. Thank you.</p> <p>4 A. Well, Bibb Allen's book. I've relied on</p> <p>5 that for the aspects of acceptance of the</p> <p>6 premium.</p> <p>7 Q. On the waiver issue?</p> <p>8 A. Waiver, yeah.</p> <p>9 Q. Okay. And you think his treatise is --</p> <p>10 And you've cited a case in your report.</p> <p>11 Does that come from Bibb Allen's book?</p> <p>12 A. Yes.</p> <p>13 Q. You don't pretend to have expertise in the</p> <p>14 law governing insurance, do you?</p> <p>15 A. What do you mean?</p> <p>16 Q. Well, you don't hold yourself out as an</p> <p>17 expert in insurance law, do you?</p> <p>18 A. No. I'm not a lawyer. So I'm not</p> <p>19 rendering any legal opinions.</p> <p>20 Q. Thank you.</p> <p>21 A. I mean, I can read the information that</p> <p>22 comes, that's common in the insurance</p> <p>23 industry, to receive case law and other</p>
Page 74	Page 76
<p>1 basic concepts that are involved in</p> <p>2 investigating and handling claims that</p> <p>3 are, you know, consistent for all types of</p> <p>4 insurance policies.</p> <p>5 Q. And you're referring again to Exhibit 6?</p> <p>6 A. Well, that and, you know, you have, you</p> <p>7 know, claims procedures in the property</p> <p>8 end of the thing.</p> <p>9 Q. And you're showing me now a book called</p> <p>10 "Adjustment of Property Losses."</p> <p>11 A. But it has some unfair claims practices,</p> <p>12 which is what I was looking at on some of</p> <p>13 this on fair claims-handling.</p> <p>14 Q. All right. We'll get to that in a moment.</p> <p>15 Keep that handy for me. But it doesn't</p> <p>16 have anything on life insurance claims,</p> <p>17 does it?</p> <p>18 A. Which one? On property? No.</p> <p>19 Q. What is the name of it?</p> <p>20 A. "Adjustment of Property Losses." It has</p> <p>21 unfair claims practices in there.</p> <p>22 Q. Any other treatises that you've relied</p> <p>23 upon to form your opinions in this case</p>	<p>1 documents from various sources regarding</p> <p>2 how claims are handled. So it's not</p> <p>3 unusual to see case law as an adjuster for</p> <p>4 handling claims.</p> <p>5 Q. All right. You and I had a discussion a</p> <p>6 moment ago about the term, quote,</p> <p>7 "reservation of rights," end quote.</p> <p>8 A. Right.</p> <p>9 Q. You use also the term, quote, "nonwaiver,"</p> <p>10 end quote --</p> <p>11 A. Right.</p> <p>12 Q. -- in your report on this case, don't you?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What does nonwaiver have to do with life</p> <p>15 insurance claims-handling?</p> <p>16 A. Well, nonwaiver is in the same purview as</p> <p>17 a reservation of rights, in that it's just</p> <p>18 a -- Generally, a nonwaiver is a</p> <p>19 standardized form-type thing, although it</p> <p>20 can be manuscripted out, and basically</p> <p>21 says you're investigating the claim, and</p> <p>22 you'll get back with the insured at a</p> <p>23 later time. I mean, that's --</p>

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<p style="text-align: right;">Page 77</p> <p>1 Q. That's your understanding of "nonwaiver"?</p> <p>2 A. Well, "nonwaiver" is you set out that you</p> <p>3 have a claim. You're looking at the</p> <p>4 claim. There may be a question of</p> <p>5 coverage. You know, you're reserving your</p> <p>6 rights to review the coverage aspects, and</p> <p>7 then you'll advise thereafter.</p> <p>8 Q. But what you're doing in that is, you're</p> <p>9 offering to defend the insured in a</p> <p>10 liability context, while you are reserving</p> <p>11 the right to challenge coverage issues,</p> <p>12 aren't you?</p> <p>13 A. You would use the reservation of rights,</p> <p>14 or a nonwaiver, in first-party.</p> <p>15 First-party fire has a lot of reservation</p> <p>16 of rights and nonwaivers involved. So you</p> <p>17 see that -- you see it a lot in, you know,</p> <p>18 the fire-type claim, or any first-party</p> <p>19 claim where there's a question of coverage</p> <p>20 involving the insured.</p> <p>21 Q. Have you ever seen it used in the life</p> <p>22 insurance context?</p> <p>23 A. Not yet.</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Not at this time.</p> <p>2 Q. Well, this is the only time I've got to</p> <p>3 ask you.</p> <p>4 A. I know. I haven't seen anything.</p> <p>5 Q. Neither have I.</p> <p>6 A. But, you know, if I go looking, I may find</p> <p>7 something. If I do, I will let you know.</p> <p>8 Q. I'd appreciate it.</p> <p>9 Have you ever been a plaintiff or a</p> <p>10 defendant in a lawsuit?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What types of cases have you been a</p> <p>13 plaintiff in?</p> <p>14 A. As a landlord, as an individual.</p> <p>15 Q. Were you other than an individual in your</p> <p>16 landlord cases?</p> <p>17 A. No. I was an individual in landlord</p> <p>18 cases. Then sued a few folks. Dismissed</p> <p>19 the last suit I filed against an</p> <p>20 individual from Mobile -- or two</p> <p>21 individuals in Mobile. Didn't dismiss</p> <p>22 that one. Venue was changed.</p> <p>23 Q. What was that case about?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Neither have I.</p> <p>2 A. If the person doesn't even know what a</p> <p>3 reservation of rights is, it's hard for</p> <p>4 them to use one.</p> <p>5 Q. Or if a person has no need of application</p> <p>6 of the term "reservation of rights,"</p> <p>7 there's no need to use one?</p> <p>8 A. I'd disagree with that. Because any time</p> <p>9 you've got a question of coverage, there's</p> <p>10 a need. And as a claims manager, you're</p> <p>11 going to run into situations involving</p> <p>12 coverage. So if you've got twenty-five,</p> <p>13 thirty years experience and you don't even</p> <p>14 know how to reserve rights, or when to</p> <p>15 question coverage, or notice coverage</p> <p>16 questions --</p> <p>17 Q. Can you point me to any -- any</p> <p>18 authoritative source that would suggest</p> <p>19 that the terms, quote, "reservation of</p> <p>20 rights," end quote, or the term, quote,</p> <p>21 "nonwaiver," end quote, has a place and</p> <p>22 application in the context of handling</p> <p>23 life insurance claims?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Individual was interfering in my father's</p> <p>2 funeral.</p> <p>3 Q. Okay.</p> <p>4 A. And had been a defendant in a defamation</p> <p>5 of character suit.</p> <p>6 Q. And you were a cross-claimant in that,</p> <p>7 weren't you?</p> <p>8 A. Yeah.</p> <p>9 Q. Did you serve as your own lawyer?</p> <p>10 A. Yes.</p> <p>11 Q. And your own expert witness?</p> <p>12 A. Yes.</p> <p>13 Q. Were you ever involved in a lawsuit</p> <p>14 against Allstate, involving your ex-wife,</p> <p>15 concerning an auto accident?</p> <p>16 A. I don't know whether I was involved -- I</p> <p>17 don't know whether suit was filed against</p> <p>18 Allstate.</p> <p>19 Q. Wasn't there a bad faith suit filed?</p> <p>20 A. Against Allstate and my ex-wife?</p> <p>21 Q. Yeah.</p> <p>22 A. I don't recall.</p> <p>23 Q. Okay. So then you wouldn't recall whether</p>

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<p>1 you acted as an expert witness in that</p> <p>2 either?</p> <p>3 A. That one was settled with Allstate.</p> <p>4 Q. It was settled?</p> <p>5 A. Yeah.</p> <p>6 Q. Before or after the suit was filed?</p> <p>7 A. I don't even -- I don't recall whether the</p> <p>8 lawsuit was filed. Do you have the style</p> <p>9 on it?</p> <p>10 Q. I do somewhere. Just a moment and I'll</p> <p>11 see if I can help you with it. John and</p> <p>12 Carol Allen versus S. Freeman Green and</p> <p>13 Allstate Insurance Company. Civil action</p> <p>14 number CV-1986-1088. Circuit Court of</p> <p>15 Jefferson County, Alabama.</p> <p>16 A. What year?</p> <p>17 Q. 1986.</p> <p>18 A. Okay. That was when I was still with</p> <p>19 Aetna. Yeah. I didn't recall -- I recall</p> <p>20 the claim against Allstate. That was</p> <p>21 where she was rear-ended.</p> <p>22 Q. You were a plaintiff in that case, weren't</p> <p>23 you?</p>	<p>1 Q. Okay. Going back to a question I asked</p> <p>2 you earlier on the current list. Can you</p> <p>3 point out to me on Exhibit 9 any cases</p> <p>4 that involve life insurance claims, other</p> <p>5 than the one that Mr. Miles and Mr. Bill</p> <p>6 Wood were involved in?</p> <p>7 A. Number 57, I know, is a life insurance</p> <p>8 claim.</p> <p>9 Q. Okay. That's Victoria Johnson versus</p> <p>10 Northwestern Mutual Life?</p> <p>11 A. Right.</p> <p>12 Q. Is that case over?</p> <p>13 A. I don't know whether it's on appeal or</p> <p>14 not.</p> <p>15 Q. Okay. Gusty Yearout was one of the</p> <p>16 plaintiff's attorneys?</p> <p>17 A. Right.</p> <p>18 Q. And Chris King was one of the defense</p> <p>19 attorneys?</p> <p>20 A. Right.</p> <p>21 Q. Has it been tried?</p> <p>22 A. No.</p> <p>23 Q. Well, I don't want you to tell me</p>
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<p>1 A. Yeah, I guess. I didn't recall that.</p> <p>2 Q. You don't recall suing them for bad faith?</p> <p>3 A. Not from that one. No.</p> <p>4 Q. Okay.</p> <p>5 A. It may have been worded in there.</p> <p>6 (Defendant's Exhibit 8 marked</p> <p>7 for purposes of identification)</p> <p>8 Q. Mr. Allen, let me show you what is marked</p> <p>9 as Defendant's Exhibit 8, which appears to</p> <p>10 be a report from you in this case dated</p> <p>11 October 22nd, 2006. See if that is an</p> <p>12 accurate copy of that, please, sir.</p> <p>13 A. I think they had another list of the court</p> <p>14 trials. It's not a current list.</p> <p>15 Q. Do you have a current list?</p> <p>16 A. Here's a current list.</p> <p>17 Q. Let's mark this as the next number</p> <p>18 exhibit, which will be the current list.</p> <p>19 (Defendant's Exhibit 9 marked</p> <p>20 for purposes of identification)</p> <p>21 Q. And the current list would be Defendant's</p> <p>22 Exhibit 9; is that right, sir?</p> <p>23 A. Yes.</p>	<p>1 something that would jeopardize either</p> <p>2 side of the lawyers of this case --</p> <p>3 A. Right.</p> <p>4 Q. -- on information. But what can you tell</p> <p>5 me -- You say it might be on appeal; you</p> <p>6 don't know?</p> <p>7 A. I don't know exactly what the status of</p> <p>8 the case is. They had some motions, but I</p> <p>9 don't know if --</p> <p>10 Q. Summary judgment motions?</p> <p>11 A. Yeah. But I don't know what's happened,</p> <p>12 as far as whether there's been any appeal</p> <p>13 on the motions or what that is there.</p> <p>14 So --</p> <p>15 Q. Okay. What type of issue was involved in</p> <p>16 that case or is involved in that case?</p> <p>17 A. I think that involved -- Well, I know it</p> <p>18 had issues on the payment of premium and a</p> <p>19 potential lapse of premium payment.</p> <p>20 Q. Did the company, Northwestern Mutual,</p> <p>21 contend that the policy was out of benefit</p> <p>22 due to nonpayment of premium?</p> <p>23 A. Well, it had some other issues as far as</p>

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 some accounts that were involved in 2 funding the payment of the premium. So 3 there was a dispute on that issue as far 4 as what was available to fund it, and then 5 the value of the policy at the time of the 6 alleged lapse, and then whether there were 7 any -- you know, what benefits might have 8 been due.</p> <p>9 <b>Q. Was this a universal life policy, or</b> 10 <b>interest-sensitive policy, or something</b> 11 <b>like that?</b></p> <p>12 A. I think part of it had interest and part 13 of it didn't. I think there were a couple 14 different types of policy.</p> <p>15 <b>Q. Was the issue involving whether or not the</b> 16 <b>cash value, or the fund in the policy, was</b> 17 <b>sufficient to carry the premium payment?</b></p> <p>18 A. There was some issues of cash value. Yes.</p> <p>19 <b>Q. It was not a death claim, right?</b></p> <p>20 A. Yeah.</p> <p>21 <b>Q. Oh, it was a death claim?</b></p> <p>22 A. Yeah.</p> <p>23 <b>Q. Okay. And did the insurance company take</b></p>	<p style="text-align: right;">Page 87</p> <p>1 death.</p> <p>2 <b>Q. Okay. Any others? Was the issue in that</b> 3 <b>Cottingham versus CNA case whether or not</b> 4 <b>the death was, in fact, accidental?</b></p> <p>5 A. There's more to it than that. This was 6 where the guy had sustained -- I believe 7 this is the one where he had sustained a 8 burn. He was a diabetic. And he got 9 burned by the heater. And then he ended 10 up with having his leg amputated, and then 11 he ended up dying. So it was kind of a 12 chain of causal events associated with it.</p> <p>13 <b>Q. And the insurance company contended that</b> 14 <b>he died of disease as opposed to an</b> 15 <b>accident? Is that fair to say?</b></p> <p>16 A. No, I don't think so.</p> <p>17 <b>Q. Okay. Do you remember what the issue was,</b> 18 <b>then?</b></p> <p>19 A. It was over him dying, and whether there 20 was a causal relationship between the 21 injury and the death. That's all I 22 remember there.</p> <p>23 <b>Q. Any others?</b></p>
<p style="text-align: right;">Page 86</p> <p>1 the position that the policy had lapsed 2 because the fund in the policy was not 3 sufficient to carry the premium?</p> <p>4 A. That was part of it. Yes.</p> <p>5 <b>Q. Do you remember anything else?</b></p> <p>6 A. I remember there was -- also you had a 7 question on the effective date of the 8 policy, and whether this was a renewal, or 9 whether it was a continuation, or whether 10 it was a new policy. And there were those 11 issues involved, too.</p> <p>12 <b>Q. Okay. Is that about all you can remember</b> 13 <b>about the issues involved in the case?</b></p> <p>14 A. Yeah. I mean, that's the -- I mean, 15 whether the policy had cash value in it, 16 some portions, you know, would have 17 allowed for cash value. Some policies 18 didn't have cash value. So it was a 19 combination of those.</p> <p>20 <b>Q. I see. Okay. Any others?</b></p> <p>21 A. 53, I think, had some elements. It was -- 22 I'm thinking that may be on accidental 23 death, involving benefits on accidental</p>	<p style="text-align: right;">Page 88</p> <p>1 A. That's all I recall.</p> <p>2 <b>Q. Thank you, sir.</b></p> <p>3 <b>In your role as an expert witness</b> 4 <b>hired by the party to civil litigation, do</b> 5 <b>you attempt to give fair treatment to all</b> 6 <b>of the language in a policy or a document,</b> 7 <b>or do you consider your role to be that of</b> 8 <b>an advocate for the party who has hired</b> 9 <b>you?</b></p> <p>10 A. I don't consider myself an advocate.</p> <p>11 <b>Q. Do you try to give fair treatment to all</b> 12 <b>of the documents?</b></p> <p>13 A. Absolutely.</p> <p>14 (Defendant's Exhibit 10 marked 15 for purposes of identification)</p> <p>16 <b>Q. Okay. Let me show you what is marked as</b> 17 <b>Defendant's Exhibit 10, which appears to</b> 18 <b>be a letter dated January the 2nd, I</b> 19 <b>think, 2004.</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. All right. Now, if you would, your pages</b> 22 <b>of your report do not appear to be</b> 23 <b>numbered.</b></p>

22 (Pages 85 to 88)

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<p>1 A. They are. Top right.</p> <p>2 Q. Yes, they are. I'm sorry.</p> <p>3 A. Top left, I mean.</p> <p>4 Q. They sure are. Let me find where I'm</p> <p>5 talking about. Okay. The second page of</p> <p>6 your report, if you will turn to that,</p> <p>7 please, sir.</p> <p>8 A. All right.</p> <p>9 Q. And in the second paragraph on the second</p> <p>10 page you refer to this particular letter,</p> <p>11 do you not?</p> <p>12 A. Yes.</p> <p>13 Q. And your letter says, and I quote, "The</p> <p>14 letter stated that if premium was received</p> <p>15 by January 17, 2004, that the policy would</p> <p>16 be reinstated."</p> <p>17 A. Uh-huh (positive response).</p> <p>18 Q. Okay. You did not mention the rest of</p> <p>19 that sentence, did you, from the letter?</p> <p>20 A. Which part are you talking about?</p> <p>21 Q. The part that says "provided the insured</p> <p>22 is still in good health."</p> <p>23 A. Correct.</p>	<p>1 and "B" under the policy.</p> <p>2 Q. Yes, sir.</p> <p>3 A. So, you know, I reference what the</p> <p>4 certificate said, as far as, you know,</p> <p>5 whether they require any evidence of</p> <p>6 insurability, and the overdue premiums</p> <p>7 were paid.</p> <p>8 Q. Okay. Have you read this policy?</p> <p>9 A. Yes.</p> <p>10 Q. The entire policy?</p> <p>11 A. Well, whatever I had. I don't recall</p> <p>12 whether we have a certified copy of that</p> <p>13 policy or not. Whatever I had policy-wise</p> <p>14 is in the notebook here.</p> <p>15 Q. Right. If you will turn, please, sir, to</p> <p>16 page 6 of your report.</p> <p>17 A. Okay.</p> <p>18 Q. The very top sentence up there where it</p> <p>19 says, "It has been my experience that the</p> <p>20 date anything is mailed is considered as</p> <p>21 the date the item was transferred to the</p> <p>22 addressee."</p> <p>23 A. Yes.</p>
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<p>1 Q. Why not?</p> <p>2 A. Well, you know, that's just the way I</p> <p>3 worded it.</p> <p>4 Q. I know it. But why didn't you give the</p> <p>5 rest of what the letter said with regard</p> <p>6 to that same sentence that you are</p> <p>7 paraphrasing?</p> <p>8 A. That's just the way I worded the sentence.</p> <p>9 Q. Is that not material to you, the condition</p> <p>10 provided in there, quote, "provided the</p> <p>11 insured is still in good health"?</p> <p>12 A. At the time the payment was mailed, he was</p> <p>13 in good health.</p> <p>14 Q. That's not what I asked. Is that not</p> <p>15 material to you at all, that it says,</p> <p>16 quote, "provided the insured is still in</p> <p>17 good health"?</p> <p>18 A. I wasn't addressing the issue of his</p> <p>19 health. I was addressing the issue if it</p> <p>20 was received by the 17th, it would be</p> <p>21 reinstated.</p> <p>22 Q. Even if he was dead?</p> <p>23 A. And, you know, I went on to mention "A"</p>	<p>1 Q. Where does that experience come from with</p> <p>2 regard to life insurance premium payers?</p> <p>3 A. That's not necessarily involving life</p> <p>4 insurance, but just, in general, of when</p> <p>5 payment is considered as being, you know,</p> <p>6 sent, received. I mean, I remember that</p> <p>7 going back to college. You know, once you</p> <p>8 put it in the mail at that point in time,</p> <p>9 that's when you've sent it on to the other</p> <p>10 person. So --</p> <p>11 Q. And that's when it's deemed received in</p> <p>12 every instance, in your judgment?</p> <p>13 MR. SANSPREE: Object to form.</p> <p>14 A. I mean, as far as the taxes go, I mean,</p> <p>15 that's the example I gave. If you got it</p> <p>16 in there before midnight on the 15th, it's</p> <p>17 deemed as having been transferred over to</p> <p>18 the Feds. So, I mean, that's the best</p> <p>19 example.</p> <p>20 Q. I'm painfully familiar with taxes. But,</p> <p>21 nevertheless, is it your understanding</p> <p>22 that always an item is deemed received</p> <p>23 when it is placed in the mail to the</p>

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<p>1 addressee?</p> <p>2 A. I haven't read anything to the contrary to</p> <p>3 that position, that once you put it in the</p> <p>4 mail, it's deemed on the received side.</p> <p>5 Q. You would agree that parties can contract</p> <p>6 otherwise, wouldn't you?</p> <p>7 A. What do you mean "contract"?</p> <p>8 Q. Contract differently as to when something</p> <p>9 is deemed received or payment made.</p> <p>10 A. Are you talking about a written contract,</p> <p>11 or an oral contract, or just --</p> <p>12 Q. Either.</p> <p>13 A. You know, you can have variations, I</p> <p>14 guess.</p> <p>15 Q. And if the rule is, as you stated, that an</p> <p>16 item is deemed received by the addressee</p> <p>17 once it's placed in the United States</p> <p>18 mail, you would agree with me that parties</p> <p>19 can contract otherwise, wouldn't you,</p> <p>20 based on your knowledge? I'm not asking</p> <p>21 you for a legal interpretation.</p> <p>22 (Brief interruption)</p> <p>23 A. Would you repeat the question again?</p>	<p>1 of premiums, and where they were to be</p> <p>2 made, and such as that?</p> <p>3 MR. SANSPREE: Without looking at</p> <p>4 it?</p> <p>5 MR. BUTLER: Yeah. Without</p> <p>6 looking at it.</p> <p>7 A. I would have to look at it.</p> <p>8 Q. Thank you. I'll give you that</p> <p>9 opportunity.</p> <p>10 MR. BUTLER: Would you mark that</p> <p>11 as the next number?</p> <p>12 (Defendant's Exhibit 11 marked</p> <p>13 for purposes of identification)</p> <p>14 Q. Defendant's Exhibit 11, right up under the</p> <p>15 top bold print "Premiums and</p> <p>16 Reinstatement," it has "Payment". And</p> <p>17 doesn't it say, "Each premium is payable</p> <p>18 in advance at our administrative office"?</p> <p>19 A. Yes.</p> <p>20 Q. And that's in Oklahoma City, Oklahoma,</p> <p>21 isn't it, wherever the administration</p> <p>22 office is?</p> <p>23 A. Wherever that is. Right.</p>
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<p>1 Q. You told me that your understanding as to</p> <p>2 -- regardless of what document or anything</p> <p>3 that's placed in the mail is generally</p> <p>4 deemed received by the addressee once it</p> <p>5 is placed in the United States mail.</p> <p>6 A. Correct.</p> <p>7 Q. My next question was, wouldn't you agree</p> <p>8 that parties could contract otherwise?</p> <p>9 A. I mean, you know, you can contract for a</p> <p>10 lot of different things. So the</p> <p>11 possibility is there.</p> <p>12 Q. Yes, sir. Have you read this policy with</p> <p>13 regard to its definitions as to when</p> <p>14 premiums are payable and how?</p> <p>15 A. I remember there was, like, thirty-one</p> <p>16 days per premium payment due on the other</p> <p>17 side. Which one are you specifically</p> <p>18 referring to?</p> <p>19 Q. I'm going to refer you just a moment. But</p> <p>20 as we sit here, do you remember, from your</p> <p>21 review and investigation of the subject</p> <p>22 Globe Life policy insuring the life of</p> <p>23 David Lurie, what it said as to payments</p>	<p>1 Q. Okay. Now, did you read Ms. Lurie's</p> <p>2 deposition?</p> <p>3 A. Yes.</p> <p>4 Q. Did you read the deposition or a summary</p> <p>5 provided to you?</p> <p>6 A. I didn't get a summary. I read her</p> <p>7 deposition.</p> <p>8 Q. Okay. And what was her testimony as to</p> <p>9 when she made a payment on this policy</p> <p>10 that had lapsed?</p> <p>11 A. She indicated that she had written a check</p> <p>12 on January 4th and -- of 2004. Although,</p> <p>13 the check stated January 4th, 2003. So we</p> <p>14 had the year change.</p> <p>15 Q. There would be no issue about that.</p> <p>16 A. Okay. And then she said she had placed</p> <p>17 that in the mail the evening of the 4th,</p> <p>18 and that the mail was picked up the</p> <p>19 morning of the 5th.</p> <p>20 Q. Of 2004?</p> <p>21 A. Of 2004. Yes.</p> <p>22 Q. January the 5th of 2004?</p> <p>23 A. Correct.</p>

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<p style="text-align: right;">Page 97</p> <p>1 Q. And for purposes of your report, had you 2 deemed that it was received by Globe Life 3 when it was placed in the United States 4 mail; is that right? 5 A. Yes. 6 Q. Okay. Defendant's Exhibit 11, however, 7 under "Premiums and Reinstatement," states 8 that "Premium is payable in advance at our 9 administrative office," doesn't it? 10 A. Yes. 11 Q. Clearly it would not have been received by 12 the date of death of David Lurie, would 13 it? 14 MR. SANSPREE: Object to the 15 form. 16 A. I don't know. You know, if it was mailed 17 on the 5th -- You don't know about the 18 mail, as to whether it was there the next 19 day. I don't know what day. And there's 20 nothing I've seen in the evidence that 21 says what day it was received by Globe. 22 So I don't know. 23 Q. Have you read the depositions of the Globe</p>	<p style="text-align: right;">Page 99</p> <p>1 the date of death of the insured, David 2 Lurie? 3 A. Well, I don't know. 4 Q. Okay. Nevertheless, the policy requires 5 it be "paid in advance at our 6 administrative office," doesn't it? 7 MR. SANSPREE: Object to the 8 form. 9 A. That's what it says. 10 Q. And if it wasn't received at the Globe 11 administrative office, then the 12 reinstatement offered in Defendant's 13 Exhibit 10 says that they must receive 14 their payment by January 17th, doesn't it? 15 A. Yes. 16 Q. And it says that the insured must be still 17 in good health, doesn't it? 18 A. Yeah. 19 Q. In fact, he was dead, wasn't he? 20 A. Not on the 2nd. 21 Q. Not on the 2nd, but he was dead -- 22 A. The morning of the 6th. 23 Q. -- the morning of the 6th.</p>
<p style="text-align: right;">Page 98</p> <p>1 people that were deposed? 2 A. Yes. 3 Q. Well, let me save some time. 4 A. All right. 5 Q. Assuming for the purposes of my question 6 that there's testimony that it was 7 received on or about January the 16th of 8 2004. 9 A. I know that's the date that it was posted. 10 Now, as to whether it was received what 11 day, that's unknown. The day it was 12 posted to the account would have been the 13 16th. So you don't know -- I mean, that's 14 a date of posting, which was a day prior 15 to the date of the 17th, which was what 16 was indicated that it had to, you know, be 17 posted by that date. 18 Q. Yes, sir. But did you get any information 19 from those depositions as to when would 20 have been the earliest that it would have 21 been received? 22 A. I don't recall that. 23 Q. Would you agree it would have been after</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Right. 2 Q. And the premium was only picked up by the 3 postman on January the 5th, right? 4 A. Yes. 5 Q. If Globe did not receive it until after 6 the 6th, then this reinstatement could not 7 have been, according to this letter, 8 effected, could it? 9 A. Well, that's if you're negating that it's 10 in the mail and it's in their possession. 11 And as far as the physical possession for 12 the dateline set there, it was in their 13 physical possession and posted before the 14 17th. 15 Q. Yes, sir. But he was not in good health, 16 you know, in between the time they 17 received the payment and the 17th, was 18 he -- 19 MR. SANSPREE: Object to the 20 form. 21 Q. -- if they received it after the 6th? 22 A. Correct. 23 Q. Okay. You wouldn't expect a life</p>

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<p style="text-align: right;">Page 101</p> <p>1 insurance company to knowingly reinstate a</p> <p>2 life insurance policy that had been lapsed</p> <p>3 and out of benefit, if they knew that the</p> <p>4 insured was dead, would you?</p> <p>5 A. Well, you know, the statement by Attorney</p> <p>6 Mitchell is contrary to that, in that</p> <p>7 Attorney Mitchell indicates that he</p> <p>8 advised them as of the 12th of January</p> <p>9 that Mr. Lurie was dead, and they said,</p> <p>10 okay, just send the premium on in.</p> <p>11 There's no problem as long as it's</p> <p>12 received before the 17th. So the</p> <p>13 affidavit of the attorney is reflective</p> <p>14 that they were with the knowledge of the</p> <p>15 death as of the 12th, and then the account</p> <p>16 was posted on the 16th.</p> <p>17 Q. My question is, from what you know about</p> <p>18 life insurance, would you expect a life</p> <p>19 insurance company to reinstate a life</p> <p>20 insurance policy that was out of benefit</p> <p>21 with knowledge that the insured was</p> <p>22 already dead?</p> <p>23 A. I think it's circumstantial as to the</p>	<p style="text-align: right;">Page 103</p> <p>1 So --</p> <p>2 Q. Can you answer my question?</p> <p>3 A. No.</p> <p>4 Q. Thank you.</p> <p>5 Since you referred to the attorney --</p> <p>6 His name is Mitchell?</p> <p>7 MR. SANSPREE: His name is</p> <p>8 Matthews.</p> <p>9 MR. BUTLER: I didn't think it</p> <p>10 was Mitchell.</p> <p>11 Q. Have you talked to Mr. Matthews?</p> <p>12 A. No.</p> <p>13 Q. Do you know to whom he talked at Globe</p> <p>14 Life?</p> <p>15 A. No.</p> <p>16 Q. Based on your experience in the insurance</p> <p>17 business or industry, would you think it</p> <p>18 reasonable to assume that an employee, an</p> <p>19 unidentified at this point-in-time</p> <p>20 employee at Globe, would say, go ahead,</p> <p>21 and, you know, if we get the premium, it</p> <p>22 doesn't matter whether the insured is dead</p> <p>23 or not? Does that make sense to you?</p>
<p style="text-align: right;">Page 102</p> <p>1 facts concerning the notice to the</p> <p>2 insurance company.</p> <p>3 Q. How is that?</p> <p>4 A. Well, the attorney had advised them of</p> <p>5 that.</p> <p>6 Q. That wasn't my question at all. Listen</p> <p>7 very carefully. I'm going to ask it the</p> <p>8 third time.</p> <p>9 Based on your knowledge of life</p> <p>10 insurance practices, would you expect a</p> <p>11 life insurance company to knowingly agree</p> <p>12 to reinstate a life insurance policy that</p> <p>13 was out of benefit, knowing that the</p> <p>14 insured was already dead?</p> <p>15 A. I don't think you can -- you know, that's</p> <p>16 second-guessing what an insurance company</p> <p>17 would do. They might --</p> <p>18 Q. Well, that's what you're doing in this</p> <p>19 case.</p> <p>20 A. Well, no. Huh-uh (negative response).</p> <p>21 I'm taking it on the facts of what was</p> <p>22 shown as testimony by the insured's</p> <p>23 attorney and the notice to the company.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I don't think you can ever truly say what</p> <p>2 any employee may say about --</p> <p>3 Q. I didn't ask you what they might have</p> <p>4 said. I said, does it make sense to you,</p> <p>5 as a person that's been in the insurance</p> <p>6 business for a lot of years?</p> <p>7 A. Makes sense that they would knowingly say</p> <p>8 that? They had the information in front</p> <p>9 of them, as far as the computer</p> <p>10 information, on whether the account is</p> <p>11 current, whether it's not current. They</p> <p>12 have the information in front of them in</p> <p>13 this situation. So, I mean, as far as</p> <p>14 saying what the employee did or didn't do,</p> <p>15 there's nothing tendered by Globe to show</p> <p>16 that the event didn't happen.</p> <p>17 Q. Is it logical that such a Globe employee</p> <p>18 would have said that?</p> <p>19 A. It's possible.</p> <p>20 Q. Is it logical?</p> <p>21 A. I don't know whether you could draw a fine</p> <p>22 line of logic to the possibility that it,</p> <p>23 you know, took effect. I mean, logically</p>

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<p style="text-align: right;">Page 105</p> <p>1 -- You may say, well, logically this 2 shouldn't happen, but "logically" doesn't 3 necessarily mean it doesn't happen. 4 <b>Q. That's right. You use logic every day, 5 don't you?</b> 6 A. I think most everybody does. 7 <b>Q. I do, too. Is it logical that such an 8 employee would have said that, knowing 9 that the person was already dead and 10 saying, "We'll reinstate anyway if we get 11 the premium in time"?</b> 12 A. I don't know what the employee knew about 13 the premium payment. 14 <b>Q. I don't either.</b> 15 A. And there's nothing been tendered by 16 anybody there that says that they did or 17 didn't talk with the attorney. 18 <b>Q. All right, sir. Would you agree that 19 people who have actually worked in life 20 insurance claims for several years would 21 have more expertise than you with regard 22 to appropriate procedures, with regard to 23 life insurance claims?</b></p>	<p style="text-align: right;">Page 107</p> <p>1 it. And then she gave it to the adjuster 2 to see if it was covered after the claim 3 manager had approved the thing, which is 4 totally contrary to what I've seen as an 5 industry standard. 6 <b>Q. You're not listening to my question. 7 Did you not find in the Globe 8 depositions of the Globe employees, the 9 three Globe employees that were deposed, 10 that the Globe procedure was to get a 11 printout of the actual policy involved in 12 the claim?</b> 13 A. Wasn't the actual policy. I think it 14 would have been a specimen. 15 <b>Q. All right. A specimen of the policy 16 involved in the claim?</b> 17 A. But you don't know that the specimen is a 18 certified copy of the policy that existed. 19 <b>Q. And you're not being an advocate here 20 today; is that right?</b> 21 A. I'm just telling you the way -- 22 <b>Q. I understand. Keep on.</b> 23 A. -- the way it was.</p>
<p style="text-align: right;">Page 106</p> <p>1 A. Well, since Globe doesn't have any 2 policies or procedures, I would say no. 3 <b>Q. Okay. Would you agree that they would 4 have more knowledge of industry standards 5 with regard to life insurance claims?</b> 6 A. No. Not the Globe folks. I mean, if you 7 haven't got any policies and procedures, 8 and everything is word-of-mouth, then that 9 would be impossible, in my opinion, for 10 these folks to have greater knowledge than 11 me when they haven't even read, you know, 12 any policies or procedures. 13 <b>Q. Okay. You did learn from review of the 14 Globe depositions that the claims 15 examiners actually reviewed the policy 16 involved, and the benefits and exclusions 17 in those policies, in adjusting the claim?</b> 18 A. After the fact. 19 <b>Q. After the death?</b> 20 A. No. Because as far as what Ms. Whitaker 21 indicated, she indicated that she got the 22 claim. She looked at it. She approved 23 it. She sent it to Legal. They approved</p>	<p style="text-align: right;">Page 108</p> <p>1 <b>Q. All right, sir. So did you read in the 2 depositions that the Globe adjusters would 3 have the policy language in front of them 4 as to benefits and exclusions?</b> 5 A. They would have a specimen, which I don't 6 know whether it was the actual policy 7 verbiage and addition dates that would 8 have been involved. But there would have 9 been some form of a specimen policy with 10 them. 11 <b>Q. Do you have any knowledge or information 12 that it was not?</b> 13 A. No. 14 <b>Q. So with regard to your thought that it 15 might not have been exact is basically 16 totally guess and surmise, isn't it?</b> 17 A. Well, I don't know, because I haven't seen 18 a certified copy of the policy, and them 19 saying that, "Yes, I reviewed the 20 declaration sheets, and then I've reviewed 21 a certified copy of the policy as 22 certified by ONRA" (phonetic). 23 <b>Q. If it's not totally guess and surmise,</b></p>

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<p>1 what is it based on, your comment that it</p> <p>2 might not have been the same benefit and</p> <p>3 exclusion language that Mr. Lurie had in</p> <p>4 his policy?</p> <p>5 A. The experience of seeing different</p> <p>6 policies submitted as being the policy in</p> <p>7 force when they weren't.</p> <p>8 Q. Okay. But you yourself, in analyzing the</p> <p>9 actions of Globe Life after the fact, did</p> <p>10 not read and rely on all of the provisions</p> <p>11 of Mr. Lurie's policy that was represented</p> <p>12 to you by Ms. Lurie's counsel as being a</p> <p>13 copy of his policy, did you?</p> <p>14 A. I made my observation based on what was</p> <p>15 submitted to me.</p> <p>16 Q. Yes, sir. And you did not take note of</p> <p>17 the language with regard to payment of</p> <p>18 premiums under "Premiums and</p> <p>19 Reinstatement" contained on Exhibit 11,</p> <p>20 did you?</p> <p>21 A. What do you mean? As far as addressing</p> <p>22 that in my report, or what?</p> <p>23 Q. Yes, sir.</p>	<p>1 A. Deviation from industry standards?</p> <p>2 Q. No, sir. The industry standards</p> <p>3 themselves.</p> <p>4 A. Well, I mean, you've got a combination of</p> <p>5 all the different industry treatises which</p> <p>6 address claims of various forms. So as</p> <p>7 far as one particular book that I can say</p> <p>8 encompasses it all, I don't think there's</p> <p>9 one book in itself that encompasses it.</p> <p>10 It's a variety of industry treatises that</p> <p>11 govern how claims are handled.</p> <p>12 Q. Well, I'm speaking of life insurance</p> <p>13 claims here in this case. Because you do</p> <p>14 understand that's what is involved in this</p> <p>15 case?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Can you tell me where those</p> <p>18 industry standards that you claim are</p> <p>19 breached are set forth in any manual,</p> <p>20 treatise or guideline?</p> <p>21 A. I mean, we'd have to take that one-by-one</p> <p>22 on what's in the letter, and then I'd have</p> <p>23 to go back and look through the various</p>
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<p>1 A. On which part, are you saying?</p> <p>2 Q. The thing we just got through a moment --</p> <p>3 under "Payment."</p> <p>4 A. You know, I mean, it says what it says,</p> <p>5 and "at the administrative office." I</p> <p>6 mean, I guess it was addressed to the</p> <p>7 administrative office. I don't know what</p> <p>8 the address was on the envelope, but I</p> <p>9 assume it was to the administrative</p> <p>10 office.</p> <p>11 Q. Okay. But this says "Premium is payable</p> <p>12 in advance at our administrative office."</p> <p>13 And you interpret that to mean if it was</p> <p>14 placed in the mail and mailed to the</p> <p>15 administrative office, it's the date of</p> <p>16 mailing? Is that your interpretation?</p> <p>17 A. I think it's subject to ambiguity.</p> <p>18 Q. Okay. You refer often in your report to</p> <p>19 industry standards, and breach of industry</p> <p>20 standards, with regard to the adjustment</p> <p>21 of life insurance claims. Where are those</p> <p>22 industry standards published in a manual</p> <p>23 or a guideline?</p>	<p>1 books and see what's there. I'm going on</p> <p>2 my training, education and experience as</p> <p>3 far as what is within an industry standard</p> <p>4 and what's outside of an industry</p> <p>5 standard. Industry standards say you're</p> <p>6 supposed to have some sort of procedures</p> <p>7 and manual, and Globe doesn't have any.</p> <p>8 So how do they know what they're supposed</p> <p>9 to do, other than word-of-mouth?</p> <p>10 Q. Well --</p> <p>11 A. I mean, they don't have any standards</p> <p>12 within the company itself.</p> <p>13 Q. Yes, sir. Yes, sir. But you relied on</p> <p>14 your training and experience, didn't you?</p> <p>15 A. And review of -- You know, my years of</p> <p>16 experience and looking at things from a</p> <p>17 consultant and an expert witness, same</p> <p>18 point.</p> <p>19 Q. Yes, sir. But the Globe people, that you</p> <p>20 read the depositions of, relied and</p> <p>21 utilized their training and experience in</p> <p>22 the very field of life claims-handling,</p> <p>23 didn't they?</p>

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<p style="text-align: right;">Page 113</p> <p>1 A. Their training and experience is strictly</p> <p>2 a one-on-one, word-of-mouth with no</p> <p>3 procedures in mind, or no set procedures</p> <p>4 for the company.</p> <p>5 <b>Q. And yours is superior because your</b></p> <p>6 <b>training and experience is working on</b></p> <p>7 <b>plaintiffs' cases as a professional</b></p> <p>8 <b>witness to give testimony in civil</b></p> <p>9 <b>lawsuits; is that right?</b></p> <p>10 MR. SANSPREE: Object to the</p> <p>11 form.</p> <p>12 A: I do plaintiff and defense work. So</p> <p>13 it's --</p> <p>14 <b>Q. I'm sorry. Plaintiff and defense work.</b></p> <p>15 <b>Your training and experience would be</b></p> <p>16 <b>superior, in your judgment, to their</b></p> <p>17 <b>training and experience with regard to</b></p> <p>18 <b>life claims-adjusting; is that right?</b></p> <p>19 A. I would say with these folks, from what I</p> <p>20 read, with them not having any training,</p> <p>21 or education, or any certification, and</p> <p>22 then having nothing to go on within the</p> <p>23 company.</p>	<p style="text-align: right;">Page 115</p> <p>1 <b>Q. And you're going to research that and</b></p> <p>2 <b>report that back to Mr. Sanspree if you</b></p> <p>3 <b>can find it?</b></p> <p>4 A. Only if I see anything on it.</p> <p>5 <b>Q. I would appreciate it.</b></p> <p>6 But you say it would be a breach of</p> <p>7 industry standard for the Globe Life</p> <p>8 claims personnel to use their training and</p> <p>9 experience wherein they adjust claims</p> <p>10 every day on these same type life</p> <p>11 insurance policies and they actually</p> <p>12 utilize the contract of insurance itself</p> <p>13 to go by with regard to benefits and</p> <p>14 exclusions?</p> <p>15 A. Well, I mean, this one, they accepted the</p> <p>16 -- I mean, initially Globe says, "Yeah,</p> <p>17 it's paid. It's payable." And then the</p> <p>18 law firm looked at it and they say it's</p> <p>19 payable. And then you come back to the</p> <p>20 examiner and they say, "Oh, no, we're not</p> <p>21 going to pay the thing." I mean, that's</p> <p>22 just a total backwards approach from what</p> <p>23 industry standards are. And so --</p>
<p style="text-align: right;">Page 114</p> <p>1 <b>Q. Well, they have the policy, don't they,</b></p> <p>2 <b>that sets forth the contract?</b></p> <p>3 A. Yeah. But they don't have any policies</p> <p>4 and procedures manual. I know you've seen</p> <p>5 them, and they go down and explain how</p> <p>6 you're supposed to do things when you get</p> <p>7 a coverage issue, how it's supposed to be</p> <p>8 addressed, how it's supposed to be</p> <p>9 handled. But here they say they've got</p> <p>10 nothing but word-of-mouth to guide any of</p> <p>11 these folks. And then you've got a person</p> <p>12 that says they've been there thirty years</p> <p>13 and they don't know what a reservation of</p> <p>14 rights is. I know my experience is better</p> <p>15 than theirs if they don't even have a</p> <p>16 concept of that.</p> <p>17 <b>Q. I might agree with you if you can point to</b></p> <p>18 <b>me any place that any company on life</b></p> <p>19 <b>insurance claims utilizes the terminology,</b></p> <p>20 <b>quote, "reservation of rights," end quote,</b></p> <p>21 <b>or "nonwaiver." But you don't have any</b></p> <p>22 <b>such information, do you?</b></p> <p>23 A. Not today.</p>	<p style="text-align: right;">Page 116</p> <p>1 <b>Q. You say that what they should have done</b></p> <p>2 <b>initially, the first claims person that</b></p> <p>3 <b>touched the claim -- Do you know when the</b></p> <p>4 <b>proof of loss came in?</b></p> <p>5 A. I don't recall the date on that.</p> <p>6 <b>Q. Wasn't it sometime in March? I don't</b></p> <p>7 <b>either.</b></p> <p>8 A. It was after January.</p> <p>9 <b>Q. I would hope it was after January. But</b></p> <p>10 <b>assuming it was sometime in March of 2004,</b></p> <p>11 <b>once you've got proof of loss of the</b></p> <p>12 <b>claim, is it your view that the first</b></p> <p>13 <b>claims person that touched that should</b></p> <p>14 <b>have determined whether the policy was in</b></p> <p>15 <b>force or not at the date of death?</b></p> <p>16 A. Well, Ms. Whitaker never determined</p> <p>17 whether --</p> <p>18 <b>Q. Can you answer my question?</b></p> <p>19 A. Ms. Whitaker never determined whether the</p> <p>20 policy was in force. She never looked at</p> <p>21 the policy. She didn't determine anything</p> <p>22 on the premium payment, and she okayed the</p> <p>23 payment.</p>

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<p>1 Q. Do you think that's an answer to my 2 question? 3 A. That's what happened. 4 Q. That's not an answer to my question, 5 though. I'm entitled to get answers to 6 the questions I ask, Mr. Allen. And I've 7 got all day. 8 A. All right. 9 MR. BUTLER: Read back my 10 question, please. 11 (Requested portion of Record 12 read by the Reporter) 13 A. Yes. 14 Q. Thank you. 15 And it appears in this instance that 16 was not done; is that right? 17 A. To my knowledge. Well, you know, I don't 18 know what -- I don't know exactly what was 19 done about that. 20 Q. Let me ask you this, Mr. Allen: Do you 21 know any legitimate, logical reason that 22 Globe would have gone through the time and 23 expense to investigate the merits of this</p>	<p>1 policy was in force was investigated, 2 right, after the merits issue had been 3 investigated, the merits of the payability 4 of the claim as an accidental death? 5 A. Yes. 6 Q. Thank you. 7 And you say that was an error in the 8 order in which they went through this, in 9 your judgment? 10 A. Yes. 11 Q. Okay. And that ties back into your view 12 that the first claims person should have 13 determined whether the policy was in 14 benefit at the date of the insured's 15 death; isn't that right? 16 A. That would be one thing you would look at. 17 Q. What else would you look at? 18 A. Well, you'd look at the cause of death, 19 and whether it might have been suicidal, 20 or whether it might have been accidental, 21 suicidal, homicide. 22 Q. If the claims adjuster determined that the 23 policy was not in benefit on the date of</p>
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<p>1 claim, if it knew from the outset that the 2 insured had died while the policy was out 3 of benefit? 4 MR. SANSPREE: Object to the 5 form. 6 A. Repeat it one more time. 7 Q. Yes, sir. Do you know whether there is 8 any legitimate, logical, reasonable basis 9 that Globe would have gone to the time and 10 expense of going into investigation of the 11 merits of whether this claim is payable, 12 if they already knew that the insured had 13 died while this policy was out of benefit? 14 MR. SANSPREE: Same objection. 15 A. You'd still have some elements to 16 investigate on the timing, and when the 17 payments were submitted. There's a lot of 18 stuff you can look at from an 19 investigative standpoint. I mean, the way 20 the claim was sent in, it was sent in and 21 approved, and then the investigation was 22 started after the claim was approved. 23 Q. Well, the investigation as to whether the</p>	<p>1 death, that would be the end of it, in 2 your view, wouldn't it, or not? 3 A. Not necessarily the end of it. I mean, 4 you've still got an obligation to 5 investigate the claim, investigate all 6 avenues, and make an informed decision and 7 subject it to a cognitive review where you 8 know all the factors involved before you 9 make a decision. 10 Q. Yes, sir. And would that include 11 investigating what I call the merits? It 12 may be a poor phrase. But when I say 13 "merits," I'm talking about if there was 14 no issue of whether the policy was in 15 benefit, whether this was a payable claim 16 or not? 17 A. Well, I mean, still you've got a question 18 as to, you know, whether it was in benefit 19 or not. I mean, you've got the 20 reinstatement thing. So it's kind of 21 convoluted as to the way the thing works. 22 Q. Yes, sir. You would agree with me, would 23 you not, that this policy had clearly</p>

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<p>1 <b>lapsed and was beyond the grace period on</b>  2 <b>January the 4th of 2004?</b>  3 A. Now, they had the reinstatement portion --  4 On the grace period, it says, "A grace  5 period of thirty-one days will be allowed  6 each insured for the payment of each  7 premium after the 1st, during which period  8 his or her insurance shall continue in  9 force."  10 Q. Okay.  11 A. Where you're having each insured and each  12 premium. So it's stating a thirty-one-day  13 grace period on each premium, which would  14 be if you've got a November premium and  15 then you've got a December premium, it's  16 saying a thirty-one-day grace period on  17 each of the premiums.  18 Q. Yes, sir. But the policy had lapsed as  19 of, I think, December the 28th or toward  20 the end -- I can't remember the exact date  21 -- but toward the -- The policy had lapsed  22 and was out of benefit before the  23 beginning of 2004, wasn't it?</p>	<p>1 <b>could be modified and changed by an oral</b>  2 <b>statement?</b>  3 A. As a general rule, they're not supposed to  4 be. That doesn't mean that it doesn't  5 happen or you don't get those statements  6 from employees.  7 Q. Well, let's forget about general rules and  8 things of a general nature. Let's talk  9 about the language in this policy. Did  10 you read in this policy where it can't be?  11 A. I don't recall the exact section. That's  12 a standard condition in most policies.  13 Q. Yes, sir. You wouldn't be surprised to  14 find it in here?  15 A. Correct.  16 Q. Okay.  17 (Brief recess)  18 Q. Let me see if I've got this right,  19 Mr. Allen. Do I understand that it is  20 your opinion, that with regard to this  21 particular claim on Mr. Lurie's death,  22 that initially the claims person that  23 handled the review of the proof of loss</p>
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<p>1 A. Yes, sir.  2 Q. There's no issue about that, is there?  3 A. No issue on the lapse. They did reinstate  4 it, though.  5 MR. BUTLER: Move to strike as  6 nonresponsive.  7 Q. All right, sir. So whether or not this  8 policy was in benefit on the date of death  9 turns on the issue of whether or not the  10 premium mailed on January the 5th is  11 deemed received by Globe on that date; is  12 that right?  13 A. That's part of it.  14 Q. Anything else?  15 A. Well, the fact that you've got the  16 attorney that calls and advises them, as  17 he indicated on the 12th, that this had  18 happened, and then he receives word that  19 as long as it's received before the 17th.  20 Q. Okay. In your reading, and investigation,  21 and review and analysis of the policy in  22 question in this case, did you determine  23 whether or not the insurance contract</p>	<p>1 <b>should have initially determined whether</b>  2 <b>the contract or policy of life insurance</b>  3 <b>was still in force at the day of this</b>  4 <b>death? Is that fair?</b>  5 A. That would be one of the things.  6 Q. All right. But do I also understand your  7 testimony, that, nevertheless, whatever --  8 you know, even if the adjuster determined  9 that the contract was not in benefit at  10 the date of his death, the adjuster should  11 have gone forward to determine whether the  12 claim was otherwise payable?  13 A. Well, I mean, you need to investigate the  14 whole thing. I mean, as far as the  15 premium payment, whether it was, you know,  16 sent and received in accordance with the  17 thing, the question on the letter -- or  18 the premium payment mailed by Ms. Lurie, I  19 mean, if it had the address of Globe Life  20 on it at the prescribed place, then that  21 would be in accordance with the policy  22 provisions on the premium payment, by  23 having it properly addressed to them when</p>

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<p>1 it's put in the mail. So you've got all 2 these little things you need to look at in 3 order to ascertain, you know, what 4 happened, what was due, what wasn't due, 5 if they had any problem with the coverage, 6 any problem with the payment, any problem 7 with the reinstatement. Was it in 8 accordance with normal procedures? 9 <b>Q. Do you think they should have gone ahead 10 and determined whether the claim -- for 11 example, this is an accidental death 12 policy -- whether the claim was payable as 13 an accidental death, but for the issues 14 with regard to premium payment?</b> 15 A. I think they should have investigated the 16 whole thing before you go and you approve 17 payment, and then after you approve 18 payment by management and legal, and both 19 of those approve of payment, and then you 20 give it to an adjuster and say, all right, 21 now go investigate it, and see if there's 22 any reason to pay it. But that's after 23 you receive the approval, which is just</p>	<p>1 <b>on experience, too, didn't she?</b> 2 A. The experience of not reading any manuals 3 or knowing what policy -- 4 <b>Q. Is that what she said?</b> 5 A. No, she didn't say that. She says they 6 have no manuals, and everything is done 7 one-on-one. 8 <b>Q. Yes, sir.</b> 9 A. And that's not the way you find the 10 business is done within the insurance 11 companies. 12 <b>Q. And she said they train their adjusters 13 based on experience, and based on the 14 policies and benefits and exclusions, 15 don't they?</b> 16 A. That's one-on-one person. 17 <b>Q. Yes, sir. Okay. But, nevertheless, you 18 agree that they should have investigated 19 the -- regardless of the premium payment, 20 and whether the policy was in force or 21 not, they should have investigated the 22 entire claim?</b> 23 A. Yes.</p>
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<p>1 totally contrary to the way I've seen 2 business done, which is where the adjuster 3 determines all the facts, submits that to 4 management, determines if there's any 5 question there, and then the management, 6 if they've got any further question, then 7 they may seek a legal opinion after that. 8 Here they passed it through both 9 management and legal, and then came back 10 and relied on the adjuster to come up with 11 a basis for denial. 12 <b>Q. But with regard to the procedures, you 13 think that they handled it somewhat 14 backwards based on procedures they should 15 have followed?</b> 16 A. Well, they don't have any procedures. 17 <b>Q. Well --</b> 18 A. I mean, they say -- 19 <b>Q. They didn't say they --</b> 20 A. She said they didn't have a policies and 21 procedures manual, and it was 22 word-of-mouth. But that again is -- 23 <b>Q. That's right. She said it was also based</b></p>	<p>1 <b>Q. Okay. And the only difference is, they 2 didn't make the determinations in the 3 order that you say they should have; isn't 4 that correct?</b> 5 A. Yes. 6 <b>Q. Okay. Because they did do a -- Would you 7 agree with me that they did a thorough 8 investigation as to what we've been 9 calling the merits of the claim, as to 10 whether it was payable, but for the issues 11 concerning whether the policy was in 12 force? Did you look at that?</b> 13 A. Repeat the question again. 14 <b>Q. In other words -- Let's forget about the 15 issue, for right now, for the purpose of 16 my question, about whether the policy was 17 in force or not. I understand your 18 opinion on that.</b> 19 A. Okay. 20 <b>Q. Did you read what was done by the claims 21 personnel to investigate the merits of the 22 claim, in other words, whether he died of 23 accidental death, and things of that</b></p>

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<p>1 nature, and that sort of thing? Did you 2 read that?</p> <p>3 A. Yeah. They did make a determination based 4 on the -- I think they ordered the 5 coroner's report or police report.</p> <p>6 Q. Yes, sir. And did you find that that part 7 of the investigation appeared to have been 8 done reasonably?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And the determination on that 11 portion was that it was a payable claim, 12 wasn't it?</p> <p>13 A. Correct.</p> <p>14 Q. And that was the opinion of Ms. Whitaker, 15 who's in charge of the Claims Department, 16 and it was the opinion of Brian Mitchell 17 in the Legal Department, wasn't it?</p> <p>18 A. Okay. Yeah. Because we've got Matthews 19 and Mitchell.</p> <p>20 Q. Right. So if there was any negligence 21 involved here, it was in regard to the 22 first person in the Claims Department at 23 Globe that first looked at the claim,</p>	<p>1 regard to premiums; is that right?</p> <p>2 A. Well, it should have been an 3 all-encompassing investigation. And as to 4 whether they have theirs segmented out for 5 each person doing a given task, and then 6 somebody pulls everything together, you 7 know, I don't know specifically as to how 8 they handled that.</p> <p>9 Q. But it's your opinion that that should 10 have been the first order of business?</p> <p>11 A. Yeah. That's one of the first things you 12 look at, is your coverage.</p> <p>13 Q. So, then, if there is negligence involved 14 here in the processing of the Lurie claim, 15 it was with regard to that person not 16 doing that initially in this case; is that 17 right?</p> <p>18 A. Well, it moves on down the line. Because 19 one person is not doing it and then other 20 folks don't ask any questions about that, 21 and then they accept some basic things. 22 So it's moving on down where, you know, 23 several people are not doing a good</p>
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<p>1 because she apparently did not determine 2 whether the policy was in force or not at 3 the date of death; is that right?</p> <p>4 A. That would have been the claim manager and 5 the Legal Department. Because she made 6 the -- Ms. Whitaker made the decision.</p> <p>7 Q. I don't think you're following my 8 question. I may not have stated it very 9 clearly. But I'm talking about the first 10 person that --</p> <p>11 A. Whoever took the phone call in?</p> <p>12 Q. No. I'm talking about when they received 13 the proof of loss.</p> <p>14 A. Okay.</p> <p>15 Q. Do you know who that person was that first 16 handled the claim upon receipt of the 17 proof of loss?</p> <p>18 A. I don't recall the name.</p> <p>19 Q. Okay. Fair enough.</p> <p>20 Whoever that person was, in your 21 judgment, should have made the 22 investigation as to whether the policy was 23 in force, and investigated the issues with</p>	<p>1 overview.</p> <p>2 Q. Okay. But that information should have 3 been determined initially, shouldn't it 4 have, about whether the policy was in 5 force or not on the premium issues?</p> <p>6 A. That should have been done before any 7 decision was made.</p> <p>8 Q. What possible benefit, in your judgment, 9 would there have been to Globe to spend 10 the time and expense to investigate the 11 merits if the policy was not in benefit at 12 the date of death?</p> <p>13 A. They wouldn't be in this lawsuit today if 14 they had investigated the thing properly.</p> <p>15 Q. You're not listening to my question. 16 Please take your time and listen to it. 17 We'll both get out of here a lot quicker. 18 My question is this: What possible 19 benefit would there have been to Globe to 20 spend the time and expense to investigate 21 the merits of the claim if Globe already 22 knew that the policy was not in benefit on 23 the date of Mr. Lurie's death?</p>

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- 1 A. You would still need to investigate it to  
2 make sure that the entire investigative  
3 process for the claim was completed and  
4 that you've obtained all the relevant data  
5 to make the decision -- make the informed  
6 decision, and then you can make a  
7 cognitive review of what information you  
8 have and determine whether you have the  
9 information you need to make the decision.
- 10 Q. Do you agree with me that the options  
11 facing Globe on the Lurie claim were  
12 either to refund the premium, or to pay  
13 the claim?
- 14 A. I think they would have denied it, too,  
15 and not refunded the premium or not paid  
16 the claim.
- 17 Q. Well, it wouldn't be appropriate to deny  
18 the claim and not to refund this premium,  
19 would it?
- 20 A. Well, again, you know, what should be and  
21 what is are two different things. And I'm  
22 not --
- 23 Q. I'm not talking about "should be." Do you

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- 1 actually believe, from an objective  
2 standpoint, that Globe would have held the  
3 \$33.00 in premium after denying the claim?
- 4 A. Shouldn't. But, I mean, you know, they  
5 refunded it. But, I mean, you can't make  
6 a general rule and say, okay, well, this  
7 doesn't make sense. Well, there are a lot  
8 of things that are done that don't make  
9 sense.
- 10 Q. That's right. So if Globe viewed their  
11 options on this claim as either refunding  
12 the premium or paying the claim, if they  
13 determine that the claim should be denied  
14 and should not be paid, if they view that  
15 their option ultimately was refund of the  
16 premium, it wouldn't be of much benefit  
17 for Globe to hold that premium of \$33.00  
18 for three months, would it?
- 19 A. Benefit to Globe strictly on withholding  
20 the premium or the premium reimbursement?
- 21 Q. Yes.
- 22 A. No.
- 23 Q. Okay. And if, in fact, this claim was not

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- 1 payable under the policy and the governing  
2 law -- and I'm not asking you to agree  
3 with me on that, but to assume that that's  
4 a fact -- the only damages that Ms. Lurie  
5 would have, possibly, is the delay  
6 occasioned by the refund of her premium,  
7 wouldn't it, the loss of the use of her  
8 \$33.00?
- 9 A. Repeat it one more time. I mean, you're  
10 asking -- you're getting multi-part  
11 questions and then throwing --
- 12 MR. SANSPREE: Just let him ask  
13 it.
- 14 THE WITNESS: All right.
- 15 Q. Assuming for the purposes of my question  
16 that Mr. Lurie, based on all the facts --  
17 I'm not asking you to agree. I'm asking  
18 you to assume for the purposes of my  
19 question, if the claim was not payable  
20 according to what all took place, and the  
21 provisions in the policy, and the  
22 applicable law, then Ms. Lurie received  
23 her refund of premium, so the only loss

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- 1 that she would have had would have been  
2 the loss of use of that \$33.00 for the  
3 three months involved in the claims  
4 determination; isn't that right?
- 5 A. That's if you're saying everything else is  
6 right, and that it's just the premium.
- 7 Q. Yes, sir.
- 8 A. That would be correct on the premium  
9 alone. I don't agree, as you said it,  
10 with the end result.
- 11 Q. Okay. I noticed in your report -- or, at  
12 least, I didn't find it, any reference to  
13 your expressing an opinion of bad faith.  
14 Have I missed something in your report?
- 15 A. I believe bad faith is a jury  
16 determination, and it's not my judgment  
17 call as to what constitutes bad faith.  
18 Mine is an evaluation of the deviation  
19 from industry standards. So I don't  
20 comment on what -- I don't make the  
21 judgment call on the bad faith.
- 22 Q. Did you find any evidence of intentional  
23 or malicious conduct on Globe's part of

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<p>1 handling this claim as opposed to simply</p> <p>2 violation of industry standards, in your</p> <p>3 view, and negligence?</p> <p>4 A. They were intentionally looking for a way</p> <p>5 to get rid of the claim.</p> <p>6 Q. Excuse me?</p> <p>7 A. I feel that after the claim manager</p> <p>8 approved it and after Legal approved the</p> <p>9 thing, then I think they intentionally</p> <p>10 went looking for some other way to not pay</p> <p>11 the claim.</p> <p>12 Q. If, in fact, the policy was out of benefit</p> <p>13 at the date of death, wouldn't that be a</p> <p>14 legitimate reason, in your judgment, to</p> <p>15 deny the claim?</p> <p>16 A. Well, I mean, you would have to again --</p> <p>17 Q. Please answer my question, and then</p> <p>18 explain it as long as you wish.</p> <p>19 A. Repeat it one more time.</p> <p>20 Q. See, that's our problem, is that you start</p> <p>21 doing something other than answering my</p> <p>22 question, and then you can't remember what</p> <p>23 was asked of you.</p>	<p>1 Q. Go ahead. Answer it as you want.</p> <p>2 A. Okay. Well, give me the question again</p> <p>3 and we'll start again.</p> <p>4 Q. Do you remember it?</p> <p>5 A. No.</p> <p>6 Q. See.</p> <p>7 MR. BUTLER: Give him the</p> <p>8 question again.</p> <p>9 (Requested portion of Record</p> <p>10 read by the Reporter)</p> <p>11 A. I'd say no, as a qualified, due to the</p> <p>12 fact that you've got to determine what</p> <p>13 factors surround the basis for denial. If</p> <p>14 everything is clean, and everything was</p> <p>15 done as it should be, then you may have a</p> <p>16 legitimate reason. If it wasn't done in</p> <p>17 accordance with what should have been</p> <p>18 done, then you may not have a reason.</p> <p>19 Q. Well, see, that's what my question is,</p> <p>20 because you leave provisions in your</p> <p>21 answer. You said if everything was done</p> <p>22 appropriately and the policy was out of</p> <p>23 benefit, you may have a legitimate reason.</p>
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<p>1 MR. BUTLER: Please read it back.</p> <p>2 (Requested portion of Record</p> <p>3 read by the Reporter)</p> <p>4 A. Could be.</p> <p>5 Q. Thank you.</p> <p>6 In other words, you think the claim</p> <p>7 could be payable if, in fact, the policy</p> <p>8 was out of benefit at the date of the</p> <p>9 death?</p> <p>10 A. Well, I think this again --</p> <p>11 Q. Can you answer first and then explain?</p> <p>12 A. I'd like to explain it and then answer.</p> <p>13 Q. Then we don't remember the question. But</p> <p>14 go ahead.</p> <p>15 A. Well, let's repeat the question one more</p> <p>16 time since --</p> <p>17 Q. See.</p> <p>18 A. I get started and then you stop me and</p> <p>19 then we lose the role.</p> <p>20 Q. It's because you're answering something</p> <p>21 other than the question, John.</p> <p>22 A. I'm getting to your question. You're just</p> <p>23 not --</p>	<p>1 Under what circumstances would you not,</p> <p>2 under that scenario?</p> <p>3 A. Well, I mean, in this one you've got a lot</p> <p>4 of things that didn't go right.</p> <p>5 Q. Yeah. But didn't I ask you to assume for</p> <p>6 the purposes of my question --</p> <p>7 A. But to assume is to get an answer that is</p> <p>8 more in line with what you want to hear</p> <p>9 and not in accordance with what I see.</p> <p>10 Q. I understand that. I don't think I'm</p> <p>11 going to get you to agree with me on every</p> <p>12 provision, every issue in this case that</p> <p>13 is my contention, Mr. Allen. But if you</p> <p>14 agree that, unquestionably, this</p> <p>15 particular policy was out of benefit on</p> <p>16 the date of death, wouldn't that be a</p> <p>17 legitimate reason to deny the claim? Yes</p> <p>18 or no?</p> <p>19 A. Could be.</p> <p>20 Q. All right.</p> <p>21 A. That's what it is. Because you want a</p> <p>22 specific, and there are too many other</p> <p>23 things that go in there that can cause a</p>

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<p>1 variance.</p> <p>2 <b>Q. Are you working for Mr. Sanspree in this</b></p> <p>3 <b>case on an hourly rate?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. And what is your hourly rate?</b></p> <p>6 A. \$175.00.</p> <p>7 <b>Q. Okay. Approximately how many hours do you</b></p> <p>8 <b>have in the case?</b></p> <p>9 A. Let's see. I sent one bill for 39.10</p> <p>10 hours. And I may have another 11 or 12</p> <p>11 hours that I haven't billed for on that.</p> <p>12 <b>Q. Can we get a copy?</b></p> <p>13 A. You can have a copy of the whole thing.</p> <p>14 If she wants to copy this and then send it</p> <p>15 to you, you can have a copy of everything</p> <p>16 I've got in here.</p> <p>17 <b>Q. Well, does that entire notebook include</b></p> <p>18 <b>everything that you used to form your</b></p> <p>19 <b>opinions in this case?</b></p> <p>20 A. I mean, it doesn't include the treatises.</p> <p>21 But as far as the documents, I mean, these</p> <p>22 would be the other documents, and then</p> <p>23 whatever documents I had in here.</p>	<p>1 <b>Q. What's that one?</b></p> <p>2 A. That was on the personal insurance. It</p> <p>3 didn't have anything on the adjusting.</p> <p>4 <b>Q. That's what I recalled.</b></p> <p>5 A. This has some unfair claim practices,</p> <p>6 which are across-the-board.</p> <p>7 <b>Q. You express opinions of unfair claims</b></p> <p>8 <b>practices in this case?</b></p> <p>9 A. And then Bibb's book.</p> <p>10 <b>Q. On unfair claims practices, what is your</b></p> <p>11 <b>basis for expressing an opinion that the</b></p> <p>12 <b>handling of this claim was an unfair</b></p> <p>13 <b>claims practice?</b></p> <p>14 A. Well, there's not an unfair claims</p> <p>15 practice recognized in the State of</p> <p>16 Alabama. But insurance companies who</p> <p>17 handle claims across the nation are</p> <p>18 required to abide by unfair claims</p> <p>19 practices in their handling of claims. So</p> <p>20 I think they would be subject to it in all</p> <p>21 the states. And even though Alabama</p> <p>22 doesn't have it, I think the folks -- from</p> <p>23 what I've seen with other companies, even</p>
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<p>1 <b>Q. I call myself marking the treatise that</b></p> <p>2 <b>you relied on for your opinions in the</b></p> <p>3 <b>case. But didn't -- We can go back</b></p> <p>4 <b>through it. But didn't we discuss all the</b></p> <p>5 <b>other treatises, and that you did not rely</b></p> <p>6 <b>on those for your opinions? Do you have</b></p> <p>7 <b>other treatises that --</b></p> <p>8 A. I've got other treatises. I mean, as far</p> <p>9 as --</p> <p>10 <b>Q. I'm only interested in those that you used</b></p> <p>11 <b>for opinions in this case, Mr. Allen. I</b></p> <p>12 <b>don't want to clutter the Record.</b></p> <p>13 A. Yeah.</p> <p>14 <b>Q. If you did, then I want --</b></p> <p>15 A. I think as far as looking at that, that</p> <p>16 has some -- on coverage aspects of the</p> <p>17 things that I felt were germane. It's</p> <p>18 nothing new that I didn't know. It's just</p> <p>19 supportive to my position.</p> <p>20 <b>Q. I understand that. And are there others</b></p> <p>21 <b>other than this Exhibit 6?</b></p> <p>22 A. No, sir. Again, we haven't -- there</p> <p>23 wasn't anything --</p>	<p>1 though Alabama doesn't recognize an unfair</p> <p>2 claims practice, they abide by those in</p> <p>3 administering claims within the State of</p> <p>4 Alabama.</p> <p>5 <b>Q. Okay. Well, what amounted to a violation</b></p> <p>6 <b>-- is it -- didn't you say Unfair Claims</b></p> <p>7 <b>Practice Act?</b></p> <p>8 A. Well, it's referred to as the --</p> <p>9 <b>Q. I'm trying to see how you referred to it</b></p> <p>10 <b>in your report.</b></p> <p>11 A. I don't know that I've got -- That's just</p> <p>12 -- I don't think I went into any unfair</p> <p>13 claims practices on that.</p> <p>14 <b>Q. I think you did.</b></p> <p>15 A. I may have.</p> <p>16 <b>Q. Mr. Allen's book is "Alabama Liability</b></p> <p>17 <b>Insurance Handbook," isn't it?</b></p> <p>18 A. Right.</p> <p>19 <b>Q. And this is not liability insurance, is</b></p> <p>20 <b>it?</b></p> <p>21 A. He covers a wide variety of insurance</p> <p>22 claims, I think. So --</p> <p>23 <b>Q. Can you find in your report any reference</b></p>

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<p style="text-align: right;">Page 145</p> <p>1 to Unfair Claims Act? It's on page 7, I 2 see, about the middle of the page. You 3 say, "Since there are no claims procedures 4 or claims manuals, this is an unfair 5 claims practice." 6 A. Right. 7 Q. Okay. So you're saying that there is a 8 requirement under the law that an 9 insurance company have a claims manual and 10 claims procedures printed? 11 A. For Alabama there's not an unfair claims 12 practices law. But as far as the National 13 Association of Insurance Commissioners, 14 the NAIC, under Section C it says, 15 "Failing to adopt and implement reasonable 16 standards for the prompt investigation of 17 claims arising under insurance policies." 18 Q. And you say those can't be done by 19 experience and word-of-mouth of the claims 20 examiners? 21 A. I think you have to have some policies and 22 procedures that were evidenced in that 23 other case.</p>	<p style="text-align: right;">Page 147</p> <p>1 uniformly during the underwriting process, 2 doesn't it? 3 A. That's part of it. Yes. 4 Q. Wasn't this case about underwriting? 5 A. It has underwriting. That's predominantly 6 underwriting. 7 Q. Well, is it on claims? 8 A. I think it speaks to the claim issues. 9 Q. Where? 10 A. As far as the fact of what you need to 11 have, in my opinion. 12 Q. Where? 13 A. It discusses claims from the standpoint of 14 bad faith, abnormal or just regular bad 15 faith. 16 Q. Yes, sir. But with regard -- You point 17 out to me where in that provision it says 18 you've got to have written procedures and 19 published guidelines for the handling of 20 claims. 21 A. It doesn't, to my recollection. It's 22 predominantly underwriting. 23 Q. Thank you.</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. That doesn't say so, though, does it, what 2 you just read from NAIC? 3 A. It says, "Failing to adopt and implement 4 reasonable standards for the prompt 5 investigation of claims arising under 6 insurance policies." 7 Q. But that doesn't say it has to be a 8 written manual or written procedures, does 9 it? 10 A. Correct. But that other case I had 11 references written procedures. 12 Q. Which one? 13 A. Madison. 14 MR. SANSPREE: Maddox. 15 Q. That said you had to have written claims 16 procedures and manuals? 17 A. It references not having procedures, and 18 word-of-mouth stuff, leads itself to 19 problems. 20 Q. Does it say it's illegal? 21 A. I don't recall it saying it's illegal. 22 Q. This is where there was no mechanism to 23 ensure that applicants were treated</p>	<p style="text-align: right;">Page 148</p> <p>1 Do you want to read and sign or -- 2 A. Please. 3 Q. Okay. 4 MR. SANSPREE: I've got just a 5 few questions to follow up. 6 EXAMINATION 7 BY MR. SANSPREE: 8 Q. John, during your work experience with the 9 various insurance companies you've 10 testified to having worked with earlier, 11 would the process of gathering information 12 to see whether or not a claim was covered, 13 would that be the same for liability and 14 property insurance as it would be with 15 life insurance? 16 A. Yes. 17 Q. And would you also, when you're adjusting 18 on liability of property and insurance 19 claim, would you look at the policy 20 language to determine coverages and 21 exclusions just like you would in a life 22 insurance claim case? 23 A. Yes.</p>

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<p>1 Q. And would the procedures in doing so be</p> <p>2 the same for liability and property cases</p> <p>3 as it would with life insurance?</p> <p>4 A. Yes.</p> <p>5 Q. Would the industry standards be the same,</p> <p>6 as it relates to property and casualty and</p> <p>7 liability insurance, as it would be with</p> <p>8 life insurance?</p> <p>9 A. In the handling of claims, yes.</p> <p>10 Q. And do you remember giving testimony for</p> <p>11 me in a life case in front of Judge Dement</p> <p>12 in Alegro versus Monumental case?</p> <p>13 A. I remember Alegro.</p> <p>14 Q. And was that a death case involving life</p> <p>15 insurance?</p> <p>16 A. I believe that's correct. Yes.</p> <p>17 Q. And was your opinion accepted as an expert</p> <p>18 opinion in Judge Dement's courtroom?</p> <p>19 A. Yes, I believe so. I didn't give a</p> <p>20 deposition, but I think I gave a report on</p> <p>21 that.</p> <p>22 Q. John, you gave some testimony earlier</p> <p>23 about the first sentence at the top of</p>	<p>1 2004?</p> <p>2 A. Yes.</p> <p>3 Q. That's all I've got.</p> <p>4 A. That would have been the 4th, which would</p> <p>5 have been when it was put in the mailbox,</p> <p>6 and then the 5th when it was picked up.</p> <p>7 REEXAMINATION</p> <p>8 BY MR. BUTLER:</p> <p>9 Q. So your date is the 4th? All you've got</p> <p>10 to do is put it in the mailbox and that's</p> <p>11 it?</p> <p>12 A. It was addressed to the administrative</p> <p>13 office.</p> <p>14 Q. Okay. Is the Alegro case on your list?</p> <p>15 A. I didn't give a deposition in that one.</p> <p>16 Q. Did you give trial testimony?</p> <p>17 MR. SANSPREE: No. He just gave</p> <p>18 a report.</p> <p>19 A. No. I think it was just a report.</p> <p>20 Q. Well, explain to me how Judge Dement would</p> <p>21 have had an opportunity to accept your</p> <p>22 testimony as an expert based on a report,</p> <p>23 as opposed to sworn testimony.</p>
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<p>1 Defendant's 11, which states "Payment,"</p> <p>2 and then it goes on to read, "Each premium</p> <p>3 is payable in advance at our</p> <p>4 administrative office." Do you remember</p> <p>5 giving that testimony earlier?</p> <p>6 A. Yes.</p> <p>7 Q. Assume with me that Ms. Lurie put the</p> <p>8 premium payment in the mail on January 5th</p> <p>9 and addressed it to the administrative</p> <p>10 office. Would that premium have been paid</p> <p>11 at that administrative office at that</p> <p>12 time?</p> <p>13 MR. BUTLER: Object to the form.</p> <p>14 Calls for a legal</p> <p>15 conclusion. The witness is</p> <p>16 not competent to testify as</p> <p>17 to that.</p> <p>18 Q. In industry standards, would that premium</p> <p>19 have been payable at that time?</p> <p>20 MR. BUTLER: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. And was Mr. Lurie, to the best of your</p> <p>23 knowledge, was he alive on January 5th,</p>	<p>1 MR. SANSPREE: It was just filed</p> <p>2 with a brief.</p> <p>3 MR. BUTLER: I understand that.</p> <p>4 A. I didn't make the decision. You know, I</p> <p>5 did my thing.</p> <p>6 Q. Is it your understanding -- Do you have</p> <p>7 knowledge that Judge Dement accepted your</p> <p>8 qualifications as an expert on life claims</p> <p>9 when you didn't even give any testimony in</p> <p>10 the case?</p> <p>11 A. Well, I gave a report. I don't know</p> <p>12 whether it was an affidavit or my report.</p> <p>13 I don't recall.</p> <p>14 Q. Well, were you examined as to your</p> <p>15 qualifications as an expert in life claims</p> <p>16 in the Alegro case?</p> <p>17 A. I don't recall.</p> <p>18 Q. How do you know whether the procedures</p> <p>19 would be the same in life insurance</p> <p>20 claims-adjusting and property and</p> <p>21 casualty, if you have no experience in</p> <p>22 life insurance claims-adjusting?</p> <p>23 MR. SANSPREE: Object to the</p>

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<p style="text-align: right;">Page 153</p> <p>1 form.</p> <p>2 A. That would be from having reviewed and</p> <p>3 worked with life claims as an expert and</p> <p>4 as a consultant.</p> <p>5 Q. For lawyers in civil cases?</p> <p>6 A. Yes.</p> <p>7 Q. Thank you, sir. That's all.</p> <p>8 (Off-the-Record discussion)</p> <p>9 MR. BUTLER: Let's mark this as</p> <p>10 our next number, number 12.</p> <p>11 We will mark it as 12 and</p> <p>12 we'll get that back to you,</p> <p>13 Mr. Allen.</p> <p>14 (Defendant's Exhibit 12 marked</p> <p>15 for purposes of identification)</p> <p>16 MR. BUTLER: What is 12?</p> <p>17 THE WITNESS: Exhibit 12 is a</p> <p>18 three-ring binder that I</p> <p>19 prepared that has my</p> <p>20 handwritten notes,</p> <p>21 deposition summaries, and</p> <p>22 documents that were produced</p> <p>23 by the plaintiff and</p>	<p style="text-align: right;">Page 155</p> <p>1 KAREN LURIE,</p> <p>2 Plaintiff,</p> <p>3 versus 1:06-CV-0034MEF</p> <p>4 GLOBE LIFE AND ACCIDENT</p> <p>5 INSURANCE COMPANY, et al.,</p> <p>6 Defendants.</p> <p>7</p> <p>8 on Thursday, the 7th day of December, 2006.</p> <p>9 The foregoing 154 computer-printed pages</p> <p>10 contain a true and correct transcript of the</p> <p>11 examination of said witness by counsel for the</p> <p>12 parties set out herein. The reading and signing</p> <p>13 of same is hereby not waived.</p> <p>14 I further certify that I am neither of kin</p> <p>15 nor of counsel to the parties to said cause, nor</p> <p>16 in any manner interested in the results thereof.</p> <p>17</p> <p>18</p> <p>19 JACKIE PARHAM, Certified</p> <p>20 Shorthand Reporter and</p> <p>21 Commissioner for the State</p> <p>22 of Alabama at Large</p> <p>23</p>
<p style="text-align: right;">Page 154</p> <p>1 defendant.</p> <p>2 MR. BUTLER: Thank you, sir.</p> <p>3</p> <p>4 *****</p> <p>5 FURTHER DEPONENT SAITH NOT</p> <p>6 *****</p> <p>7</p> <p>8 REPORTER'S CERTIFICATE</p> <p>9 STATE OF ALABAMA,</p> <p>10 MONTGOMERY COUNTY,</p> <p>11 I, Jackie Parham, Certified Shorthand</p> <p>12 Reporter and Commissioner for the State of</p> <p>13 Alabama at Large, do hereby certify that I</p> <p>14 reported the deposition of:</p> <p>15 JOHN H. ALLEN,</p> <p>16 who was first duly sworn by me to speak the</p> <p>17 truth, the whole truth, and nothing but the</p> <p>18 truth, in the matter of:</p> <p>19</p> <p>20 IN THE UNITED STATES DISTRICT COURT</p> <p>21 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>22 SOUTHERN DIVISION</p> <p>23</p>	

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**FREEDOM  
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**WITNESS CERTIFICATION**

I, John H. Allen, do hereby acknowledge that I have read the foregoing transcript of my testimony and that it is a true and correct transcription of the answers given by me to the questions propounded, except for the changes, if any, noted on the attached errata sheet.

John H. Allen  
Witness  
Printed name: John H. Allen

Sworn to and subscribed before me, this  
the 19 day of JAN, 2007.

James G. Prentiss  
Notary Public  
My Commission expires: 9-27-2007

Deposition of: John Allen  
Taken: 12/07/2006  
Court Reporter: Jackie Parham

## TRANSCRIPT ERRATA SHEET

Deposition of: John Allen  
 Taken: 12/07/2006  
 Court Reporter: Jackie Parham

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Additional research information  
 on Reservation of Rights involved  
 in Life Claims.

Examples of other life insurance  
 companies using Reservation of  
 Rights letters in life insurance claims  
 I personally worked on each of these  
 cases.

Exhibit "A": Letter of May 12, 2000 Page:  
 Reserving of rights by Monumental in  
 case of Allegro v Monumental Life  
 Ins. Co.

Exhibit "B": Letter of January 12, 2004  
 Page 1, Great-West Life Ins company  
 Reserves rights to obtain additional  
 medical information

② Letter of December 12, 2003, Page 1  
 reserves rights on ① conducting additional  
 inquiries ② contract ③ applicable law.  
 Case of Puk vs Great-West Life &  
 Annuity Ins Co